

FEDERAL COURT

B E T W E E N:

CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

**MOTION RECORD OF THE RESPONDENT, THE
ATTORNEY GENERAL OF CANADA
Rule 369 Motion / Cross-Motion to Strike Applications**

April 11, 2022

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AND IN:

Court File No.: T-316-22

FEDERAL COURT

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

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ATTORNEY GENERAL OF CANADA
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AND IN:

Court File No.: T-347-22

FEDERAL COURT

B E T W E E N:

CANADIAN CONSTITUTION FOUNDATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

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ATTORNEY GENERAL OF CANADA
Rule 369 Motion / Cross-Motion to Strike Applications**

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AND IN:

Court File No. T-382-22

FEDERAL COURT

B E T W E E N:

JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD RISTAU

Applicants

and

**GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, ATTORNEY
GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

Respondents

**MOTION RECORD OF THE RESPONDENT, THE
ATTORNEY GENERAL OF CANADA
Rule 369 Motion / Cross-Motion to Strike Applications**

April 11, 2022

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Harold Ristau (Court File T-382-22)

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Court File No.: T-306-22

FEDERAL COURT

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Applicants

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NOTICE OF MOTION

(Rule 369 Motion / Cross Motion to Strike Applications)

April 11, 2022

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Department of Justice Canada

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AND IN:

Court File No.: T-316-22

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Court File No.: T-347-22

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CANADIAN CONSTITUTION FOUNDATION

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AND IN:

Court File No. T-382-22

FEDERAL COURT

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RISTAU**

Applicants

and

**GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA,
ATTORNEY GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

**NOTICE OF MOTION
(Rule 369 Motion/ Cross-Motion to Strike Applications)**

TAKE NOTICE THAT the Respondent, the Attorney General of Canada, will make a motion to the Court in writing under Rules 369 and 221 of the *Federal Courts Rules* and the Court's residual authority to strike notices of application for judicial review on the basis that the parties lack standing and that the underlying applications for judicial review are moot.

THE MOTION IS FOR an order striking out the applications in their entirety without leave to amend.

THE GROUNDS FOR THE MOTION ARE:**The public order emergency**

1. On February 14, 2022 the Governor in Council (GIC) issued a proclamation pursuant to subsection 17(1) of the *Emergencies Act* declaring a public order emergency that necessitates the taking of special temporary measures for dealing with the emergency (the *Proclamation*).
2. The next day, on February 15, 2022, the GIC made the *Emergency Measures Regulations (Regulations)* and the *Emergency Economic Measures Order (Order)* pursuant to subsection 19(1) of the *Emergencies Act*.
3. On February 21, 2022, pursuant to the parliamentary supervision provisions of the *Emergencies Act*, the House of Commons confirmed the declaration of a public order emergency proclaimed on February 14, 2022.
4. Two days later, on February 23, 2022, the GIC directed that a proclamation be issued revoking the declaration of a public order emergency (the *Revoking Proclamation*).

The Applications and the Parties

5. Four applications for judicial review have been commenced challenging the GIC's decision to proclaim a public order emergency pursuant to the *Emergencies Act* and to enact the *Regulations and Order*:

(a) *Canadian Frontline Nurses and Kristen Nagle v. AGC (T-306-22)*

6. The Canadian Frontline Nurses (CFN) and Kristen Nagle commenced their application for judicial review on February 17, 2022. CFN opposes pandemic-related mandates and restrictions, and was a participating group in the Freedom Convoy 2022 (Convoy) and supports the Convoy's objectives.

7. Nagle is described as a registered nurse and a director of CFN. She opposes public health mandates and restrictions related to the COVID-19 pandemic. She participated in and supported the Convoy.

(b) *Canadian Civil Liberties Association v. AGC (T-316-22)*

8. The Canadian Civil Liberties Association (CCLA) commenced its application on February 18, 2022. CCLA describes itself as an independent, non-profit, non-government organization that is dedicated to defending and promoting human rights and civil liberties.

(c) *Canadian Constitution Foundation v. AGC* (T-347-22)

9. The Canadian Constitution Foundation (CCF) commenced its application on February 22, 2022. It was founded in 2002 and describes itself as an independent, national, and non-partisan registered charity whose mission is to protect constitutional freedoms...through education, communication, and litigation.

(d) *Jeremiah Jost, Edward Cornell, Vincent Gircys, and Harold Ristau v AGC et al. (collectively, the “Jost applicants”)* (T-383-22)

10. The Jost applicants commenced their application on February 24, 2022. Each of the Jost applicants is a private citizen who participated in the Convoy. Applicants Cornell and Gircys had their banks accounts frozen as a result of the Order; Applicants Jost and Ristau did not.

The Applications are moot

11. It is plain and obvious that the applications are moot since each seeks remedies in respect of legislative instruments no longer in effect. There is no longer a live issue between the parties as the public order emergency ended on February 23, 2022, when the *Revocation Proclamation* was issued. The *Regulations* and *Order* made pursuant to subsection 19(1) of the *Emergencies Act* were revoked effective on that date. An order will have no practical effect here.

12. In the context of a motion for an interim injunction brought by CFN and heard on February 25, 2022 - two days after the *Revocation Proclamation* - Justice Mosley dismissed the motion finding that a determination of the interim injunction would have no practical effect.

13. The Court ought not to exercise its discretion to hear these moot applications. No adversarial context exists here. Any ruling on the applications will have no practical benefit to any of the parties.

14. Judicial resources ought not to be spent in a context where an outcome would have no real or concrete effect now that the impugned measures have been revoked, and, as other robust mechanisms exist within the legislative scheme to assess the appropriateness of the measures taken. These mechanisms include Parliamentary review by a committee of both Houses of Parliament. In addition, within sixty days after revocation, the GIC shall cause an inquiry to be held into the circumstances that led to the declaration being issued, and the measures taken for dealing with the emergency. These parallel ongoing proceedings risk rendering the Court's review duplicative, and possibly contradictory.

15. It is not the proper role of the Court to opine on the revoked *Proclamation* and measures (the *Regulations* and *Order*) simply for the sake of creating a precedent with no practical consequence. There is no matter to adjudicate here. Further, as noted above, adequate review mechanisms exist within the legislative scheme.

16. With the exception of Applicants Cornell and Gircys, none of the applicants were directly affected by the *Proclamation, Regulations, or Order*.

17. The CCLA, CFN and CCF raise issues and arguments that duplicate those that will be made by the Applicants who were directly affected by the *Proclamation, Regulations and Order*.

18. The applications brought by the CCLA, CFN and CCF are not an effective means of bringing these matters before the Court.

Motions to amend in T-306-22 / T-347-22

19. On March 30 and April 1, 2022 respectively, the Applicants in T-306-22 and T-347-22 filed motions to amend their notices of application. The Respondent's responses to these motions will include reference to the mootness of the applications and the Applicants' lack of standing, and by extension the present motion. The present motion is thus also a cross-motion to these motions and should be determined together with them.

Legislation relied upon

20. The Respondent relies upon the following legislation:

- (a) *Federal Courts Act*, RSC, 1985, c F-7;
- (b) *Federal Courts Rules*, SOR/98-106;

- (c) *Emergencies Act*, RSC, 1985, c 22;
- (d) *Emergencies Measures Regulations*, SOR/2022-21;
- (e) *Emergency Economic Measures Order*, SPR/2022-22.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) Decision of Justice Mosley dated March 1, 2022;
- (b) The Notices of Application of CFN, CCLA, CCF and the Jost applicants
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATED at the City of Ottawa, in the Province of Ontario, April 11, 2022.

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Harold Ristau (Court File T-382-22)



Court File No.: T-306-22

FEDERAL COURT

CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER SECTIONS 18 AND 18.1 OF THE *FEDERAL COURTS ACT*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

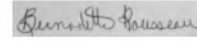
THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Suite 200, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 18, 2022



Rousseau, Bernadette
2022.02.18 10:15:52 -
05'00'

Issued by: _____

Address of local office:

180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: **THE ADMINISTRATOR**
Federal Court

AND TO: **THE ATTORNEY GENERAL OF CANADA**
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Toronto, Ontario M5H 1T1

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(service to be effected by filing with the Registry pursuant to s. 133 of the *Federal Court Rules* and s. 48 of the *Federal Courts Act*)

Application

1. This is an application for judicial review in respect of the Order in Council PC Number: 2022-106 proclamation of a public order emergency issued February 14, 2022 (the “Public Order Emergency Proclamation”) pursuant to subsection 17(1) of the *Emergencies Act*, RSC 1985, c 22 (4th Supp) (the “*Emergencies Act*”).

The applicant makes application for:

2. An Order, pursuant to Rule 317 of the *Federal Courts Rules* for production of all Orders in Council, minutes of meetings, cabinet submissions, memoranda, agreements and constituting documents relating to the Public Order Emergency Proclamation.
3. A declaration that the Respondent acted without jurisdiction or acted beyond its jurisdiction in issuing the Public Order Emergency Proclamation.
4. A declaration that the Public Order Emergency Proclamation violates the *Canadian Bill of Rights*, SC 1960, c 44 (the “*Canadian Bill of Rights*”), including the right of enjoyment of property and the right not to be deprived thereof except by due process of law.
5. A declaration, pursuant to section 52 of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982 c 11 (the “*Constitution Act 1982*”), that the Public Order Emergency Proclamation is inconsistent with section 2 of the *Charter of Rights and Freedoms* and not justified under section 1 of *Charter*.
6. A declaration that the Public Order Emergency Proclamation is unlawful and/or invalid.

7. An interim stay of the Public Order Emergency Proclamation and any regulations, orders or other measures issued or implemented pursuant to the Public Order Emergency Proclamation until this Application is heard on its merits.
8. An Order quashing the Public Order Emergency Proclamation and any regulations, orders, or other measures issued or implemented pursuant to the Public Order Emergency Proclamation.
9. Leave or an Order pursuant to Rule 302, if required, for this application for judicial review to include any regulations, orders, or other measures issued or implemented pursuant to the Public Order Emergency Proclamation, including, but not limited to, P.C. 2022-107, the *Emergency Measures Regulations* and P.C. 2022-108, the *Emergency Economic Measures Order*.
10. A writ of prohibition prohibiting the Respondent from issuing further public order emergency proclamations in the absence of a “public order emergency” as defined in the *Emergencies Act*, which definition is not met in the current circumstances.
11. Costs of this Application on a substantial indemnity basis or in an amount that provides full indemnity.
12. Such further and other relief as this Honourable Court deems just.

The grounds for the application are:

The parties to this Application

13. The Applicant, Canadian Frontline Nurses (“CFN”), is a not-for-profit corporation duly incorporated under the *Canada Not-for-profit Corporations Act*. CFN is a proud advocate of medical freedom and its mission is to unite nurses across Canada, educate the public and ensure that Canadian healthcare reflects the highest ethical standards.
14. The Applicant, Kristen Nagle (“Nagle”) is a Canadian citizen residing in Ontario.
15. Nagle is a registered nurse and a member and director of CFN.
16. CFN and Nagle are opposed to unreasonable COVID-19 related mandates and restrictions that have been implemented by various levels of Canadian governments.
17. The Respondents are the Governor in Council, the Privy Council, and Her Excellency the Governor General in Council, all acting on behalf of Her Majesty the Queen (in right of Canada), and all represented by the named Respondent, the Attorney General of Canada.

Background: The Applicants’ Participation in The Freedom Convoy 2022 Protests in Ottawa

18. Starting on January 22, 2022, convoys of vehicles began to form and travel towards Ottawa. Ultimately, several convoys across Canada formed and thousands of vehicles converged on Ottawa on or about January 28, 2022, and the days that followed in support of what has been described and known as the “Freedom Convoy 2022 Protest”.

19. The Freedom Convoy 2022 Protest in Ottawa was ongoing as of the date of the Public Order Emergency Proclamation and continues as of the date of this Application.
20. The Freedom Convoy 2022 Protest in Ottawa is a peaceful demonstration based on the principles of unity and respect for all Canadians. One of the goals of the Freedom Convoy 2022 movement in Ottawa is to increase public awareness of the issues related to various levels of Canadian government implementation of COVID-19 mandates and restrictions, as well as to encourage these governments to repeal the divisive and unreasonable COVID-19 related mandates and restrictions.
21. The organizers of the Freedom Convoy 2022 movement have also called on the political class to refrain from indiscriminately labelling Canadian citizens with pejoratives, including allegations of racism and terrorism, given that this behaviour hinders open and respectful dialogue relating to the important issues which the Freedom Convoy 2022 Protest in Ottawa has raised. The objective of the Freedom Convoy 2022 is to end not only the divisiveness of the mandates and restrictions, but also the divisiveness which is engendered by the use of this type of language.
22. The Freedom Convoy 2022 Protest has increased the Canadian public's awareness with respect to the unreasonableness of government COVID-19 mandates and restrictions. It has shown other Canadians that there is a significant, dedicated movement of Canadians who oppose these measures. There has recently been a dramatic change in Canadian public opinion towards these mandates and restrictions as reflected in a January 31 Angus Reid poll that indicates that 54% of all Canadians want all COVID-19 restrictions to end. The Freedom Convoy 2022 Protest has played an instrumental role in changing Canadian public

opinion against the policies of the Trudeau government. The federal government, unlike the vast majority of jurisdictions both in Canada and around the world, has refused to commit to a timetable to eliminate restrictions and mandates and, in fact, has indicated an intention to impose even more. Recently, The Right Honourable Prime Minister of Canada, Justin Trudeau's ("Trudeau")("Prime Minister") approval ratings have dropped to near all-time lows.

23. CFN and Nagle support the right of all Canadians to assemble and engage in peaceful protest as a means of expressing their thoughts, beliefs, and opinions in a free and democratic society.

24. CFN is a participating group in the Freedom Convoy 2022. CFN and Nagle both support the Freedom Convoy 2022 Protest in Ottawa and its objectives. Nagle, as a representative of CFN, has given speeches in support of the Freedom Convoy 2022 Protest in Ottawa. CFN and Nagle have been and intend to continue to be peaceful participants and supporters of the Freedom Convoy 2022 Protest in Ottawa.

25. CFN and Nagle unequivocally do not support violence. CFN and Nagle denounce violence and do not view violence as a legitimate means of expression or as a means of achieving one's political ends. CFN and Nagle are not aware of any violence in connection with the Freedom Convoy 2022 Protest in Ottawa, nor is there any intention on the part of the Freedom Convoy 2022 for there to be any. The repeatedly stated goal of the Freedom Convoy 2022 Protest is for it to be peaceful and to ensure that it remains that way.

The Respondent Invokes the Emergencies Act to Suppress Political Dissent

26. The Prime Minister does not support the Freedom Convoy 2022 Protests or its goals and has decried its supporters. On January 26, 2022, Prime Minister Trudeau made the following statement:

We know that the way through this pandemic is by getting everyone vaccinated and the overwhelming majority close to ninety percent of Canadians have done exactly that. **The small fringe minority of people who are on their way to Ottawa, or who are holding unacceptable views that they're expressing, do not represent the views of Canadians** who have been there for each other who know that following the science and stepping up to protect each other is the best way to continue to ensure our freedoms, our rights, our values as a country. [*emphasis added*]

27. Prime Minister Trudeau has previously referred to individuals who choose not to get vaccinated as often being racist and misogynistic extremists. He has rhetorically asked whether these people “should be tolerated.”

28. On February 16, 2022 during question period, Prime Minister Trudeau, in response to a question by a Jewish MP and descendant of Holocaust survivors, accused the Conservatives of “standing with people who wave swastikas” because of their opposition to the invocation of the *Emergencies Act*.

29. The invocation of the *Emergencies Act* is improperly motivated by a design to target, threaten and punish individuals who have different views from that of the Prime Minister with respect to COVID-19 mandates and restrictions. The political emergency that the Prime Minister is subjectively experiencing because of the Freedom Convoy 2022 Protest’s effectiveness in reducing support for his government’s non-science based COVID-19

mandates and restrictions falls far short of constituting an actual national emergency as defined in the *Emergencies Act*.

30. The invocation of the *Emergencies Act* now threatens Freedom Convoy 2022 Protestors and their supporters (those who hold differing views from the Prime Minister with respect to COVID-19 restrictions and mandates which the Prime Minister has stated are “unacceptable”) with deprivation of the use of their financial assets without due process of law.
31. The Honourable David Lametti, Minister of Justice and Attorney General of Canada, labelled some of those who support the Freedom Convoy 2022 Protestors as members of “a pro-Trump movement” that are donating “hundreds of thousands and millions of dollars to this kind of thing”. The Minister of Justice has said such supporters “ought to be worried” about the bank freezing their accounts. The freezing of financial property without due process contrary to the *Canadian Bill of Rights* has already occurred.
32. The freezing of financial assets of those who hold differing viewpoints from that of the government in power is a hallmark of undemocratic, totalitarian regimes. The federal government’s actions in purporting to invoke the *Emergencies Act* have caused worldwide respect for Canadian democracy and freedom to be greatly diminished. They have reflected poorly on Canada’s stature in the international community and will undoubtedly call into question Canada’s ability to be a positive influence for Human Rights in the international community. The President of El Salvador has suggested that the Canadian government’s credibility with respect to democracy and freedom is now worth “zero.”

News reports and comedians in the United States and around the world have mocked the undemocratic and totalitarian steps the Trudeau government has taken to punish Canadians who hold views contrary to those of the Prime Minister. It is clear that the invocation of the *Emergencies Act* has much more to do with crushing and intimidating dissent than dealing with any “emergency”.

The Respondent Invokes the Emergencies Act

33. On February 14, 2022, the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, directed that a proclamation be issued directing that a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency.

34. The Public Order Emergency Proclamation specifies the nature of the state of affairs constituting the alleged emergency as follows:

(i) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(ii) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(iii) the adverse effects resulting from the impacts of the blockades on Canada’s relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(iv) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(v) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians

35. On February 15, 2022, the Governor General in Council issued P.C. 2022-107, the *Emergency Measures Regulations* and P.C. 2022-108, the *Emergency Economic Measures Order*, pursuant to the Public Order Emergency Proclamation.

36. Sections 2, 4, and 5 of *Emergency Measures Regulations* prohibit persons from, amongst other things:

- (a) Participating in or travelling to or within an area where “a public assembly that may reasonably be expected to lead to a breach of the peace” by causing a “serious disruption of the movement of persons or goods or the serious interference with trade”; and
- (b) Directly or indirectly, using, collecting, providing, making available or inviting a person to provide property to facilitate or participate in a public assembly that may reasonably be expected to lead to a breach of the peace by causing a serious disruption of the movement of persons or goods or the serious interference with trade.

37. The *Emergency Economic Measures Order* defines an individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations* as a “designated person”. The *Emergency Economic Measures Order* requires financial institutions and entities to cease from:

- (a) dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of that designated person;
- (b) facilitating any transaction related to a dealing referred to in paragraph (a);
- (c) making available any property, including funds or virtual currency, to or for the benefit of a designated person or to a person acting on behalf of or at the direction of a designated person; or
- (d) providing any financial or related services to or for the benefit of any designated person or acquire any such services from or for the benefit of any such person or entity.

38. On February 15, 2022, members of the Ottawa Police Service distributed leaflets titled “Ottawa Police Service Notice to Demonstration Participants” to participants in the Freedom Convoy 2022 Protest in Ottawa which set out, amongst other things, that:

You must leave the area now. Anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and you may be arrested. You must immediately cease further unlawful activity or you will face charges.

...

The Federal Emergencies Act allows for the regulation or prohibition of travel to, from or within any specified area. This means that anyone coming to Ottawa for the purpose of joining the ongoing demonstration is breaking the law.

The Public Order Emergency Proclamation is Ultra Vires and Unreasonable

39. The state of affairs set out in the Public Order Emergency Proclamation does not constitute a national emergency or a public order emergency; the issuing of the Public Order Emergency Proclamation is unreasonable in the circumstances.

40. In issuing the Public Order Emergency Proclamation without satisfying the conditions set out in the *Emergencies Act*, the Respondent has acted beyond its lawful jurisdiction.

There is No National Emergency

41. Section 3 of the *Emergencies Act* defines a “national emergency” as:

an urgent and critical situation of a temporary nature that

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

42. Section 16 of the *Emergencies Act* defines a “public order emergency” as meaning:

an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency

43. Section 16 of the *Emergencies Act* defines “threats to the security of Canada” as having the meaning assigned by section 2 of the *Canadian Security Intelligence Service Act*. Section 2 of the *Canadian Security Intelligence Service Act* defines “threats to the security of Canada” as:

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

44. There are no reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists as a result of the Freedom Convoy 2022 Protest in Ottawa.
45. Even if there are reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists, which there are not, the provinces are capable and have the authority to deal with such a situation.
46. There is no urgent or critical situation that seriously endangers the lives, health or safety of Canadians that cannot be effectively dealt with under the laws of Canada that were in force prior to the Public Order Emergency Proclamation.
47. At least seven Provincial premiers have expressed that they do not view the invocation of the *Emergencies Act* as being necessary and/or were not in favour of invoking the *Emergencies Act*, namely: Alberta Premier Jason Kenney, Saskatchewan Premier Scott Moe, Quebec Premier François Legault, Manitoba Premier Heather Stefanson, Nova Scotia Premier Tim Houston, New Brunswick Premier Blaine Higgs, and Prince Edward Island Premier Dennis King,
48. The situation at the Ambassador Bridge and the situation at the border near Coutts, Alberta, were effectively resolved prior to the Public Order Emergency Proclamation. CFN nor Nagle had a connection with those protests.

49. The Freedom Convoy 2022 Protest in Ottawa is a peaceful expression of dissent and does not constitute “a threat to the security of Canada” as defined in the *Canadian Security Intelligence Service Act*.

50. There are no reasonable grounds to believe that an urgent and critical situation that threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada exists. It does not appear that the Respondent asserts any.

The Public Order Emergency Proclamation is Inconsistent with the legislative intent of the Emergencies Act, the Bill of Rights and the Charter of Rights and Freedoms

51. The Public Order Emergency Proclamation is inconsistent with the scheme of the *Emergencies Act*, the object of the *Emergencies Act*, and the intention of Parliament at the time of the *Emergencies Act*'s drafting.

52. The *Emergencies Act* is expressly subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, “particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency.”

53. There are specific provisions contained within the *Emergency Economic Measures Order* which require financial institutions to deprive participants or supporters of those in the Freedom Convoy 2022 Protest of their property with a complete disregard for due process of law.

54. The Public Order Emergency Proclamation, and the regulations and orders that have been made pursuant thereto, are inconsistent with the *Canadian Bill of Rights*. In particular the

Public Order Emergency Proclamation, and the regulations and order that have flowed from same, infringe on the following fundamental rights and freedoms set out in the *Canadian Bill of Rights*:

- (a) the right of individuals not be deprived of enjoyment of property except by due process of law;
- (b) freedom of speech; and
- (c) freedom of assembly and association.

55. Section 2 of the *Canadian Bill of Rights* provides that the rights and freedoms recognized in the *Canadian Bill of Rights* are not to be abrogated, abridged or infringed in a law of Canada unless expressly declared by an Act of Parliament. The *Emergencies Act* does not contain a declaration that it shall be applied and construed to abrogate, abridge or infringe on the rights and freedoms recognized and declared in the *Canadian Bill of Rights*. Rather, it declares the opposite: the *Emergencies Act* is expressly subject to the rights and freedoms set out in the *Canadian Bill of Rights*.

56. The Public Order Emergency Proclamation, and the regulations and order that have been made pursuant thereto, also infringe upon individuals' rights to freedom of thought, belief, opinion and expression; freedom of peaceful assembly; and freedom of association guaranteed under section 2 of the *Charter of Rights and Freedoms*.

57. The Public Order Emergency Proclamation and the regulations and order that have made pursuant to this Proclamation are not reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

58. The Public Order Emergency Proclamation is aimed at dealing with what the Prime Minister primarily perceives to be a political emergency by unlawfully attempting to suppress and intimidate the expression of dissenting thoughts, beliefs and opinions of a segment of the Canadian population that the Prime Minister has declared to hold “unacceptable” views. The Proclamation is unlawful and *ultra vires* because there is no “national emergency” nor is there a “public order emergency.” It is also unlawful and *ultra vires* because, *inter alia*, it is a clear breach of the Bill of Rights because it purports to allow Canadians to be deprived of the enjoyment of their property without due process of law.

Rules and Legislation Relied Upon

59. The Applicants rely on the following statutory provisions and rules:

- (a) The *Emergencies Act*;
- (b) The *Canadian Security Intelligence Service Act*;
- (c) Paragraphs 1 (a), (b), (d), and (e) of the *Canadian Bill of Rights*;
- (d) Section 2 of the *Charter of Rights and Freedoms*;
- (e) Section 52 of the *Constitution Act 1982*;
- (f) Sections 18 through 18.4 of the *Federal Courts Act*, RSC 1985, c F-7;
- (g) Rules 3, 300-319, 334.1-334.40 of the *Federal Court Rules*, SOR/98-106; and
- (h) Such further and other statutory provisions and rules as counsel may advise.

This application will be supported by the following material:

- 60. The Affidavit of Kristen Nagle, to be sworn;
- 61. Hansard relating to the *Emergencies Act* R.S.C., 1985, c. 22 (4th Supp.); and
- 62. Such further and other material as counsel may advise and this Honourable Court may permit.

February 17, 2022



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Solicitors for the Applicants

SOR/2021-151, s. 22

Court File No.:

FEDERAL COURT

BETWEEN:

**CANADIAN FRONTLINE NURSES
and KRISTEN NAGLE**

APPLICANTS

- and -

ATTORNEY GENERAL OF CANADA

RESPONDENT

NOTICE OF APPLICATION
(APPLICATION UNDER SECTIONS 18 AND 18.1
OF THE *FEDERAL COURTS ACT*)

Alexander Boissonneau-Lehner

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Solicitors for the Applicants

Court File No. T-316-22



FEDERAL COURT

BETWEEN:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

- and -

ATTORNEY GENERAL OF CANADA

Respondent

Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 18, 2022

Issued by: 'JACQUELINE SMITH'

Address of local office: 180 Queen Street West
Suite 200
Toronto, Ontario
M5V 3L6

TO: **ATTORNEY GENERAL OF CANADA**
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1

APPLICATION

This is an application for judicial review in respect of the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 [*Emergency Proclamation*], made pursuant to s. 17(1) of the *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.). This is also an application for judicial review in respect of the following regulations made pursuant to s. 19(1) of the *Emergencies Act*: the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21, and the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22.

THE APPLICANT MAKES APPLICATION FOR:

1. an order quashing the *Emergency Proclamation*;
2. an order quashing the *Emergency Measures Regulations*;
3. in the alternative to (2),
 - (a) an order that ss. 2, 4, and 5 of the *Emergency Measures Regulations* are inconsistent with s. 2(b) of the *Canadian Charter of Rights and Freedoms* [*Charter*], and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that these sections are of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
 - (b) an order that ss. 2 and 4 of the *Emergency Measures Regulations* are inconsistent with s. 2(c) and s. 2(d) of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to

- s. 1 of the *Charter*, as well as an immediately effective declaration that these sections are of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
- (c) an order that s. 10 of the *Emergency Measures Regulations* is inconsistent with s. 7 of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that this section is of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
4. an order quashing the *Emergency Economic Measures Order*;
5. in the alternative to (4), an order that s. 5 of the *Emergency Economic Measures Order* is inconsistent with s. 8 of the *Charter*, and that such inconsistency cannot be demonstrably justified in a free and democratic society, pursuant to s. 1 of the *Charter*, as well as an immediately effective declaration that this section is of no force and effect, pursuant to s. 52(1) of the *Constitution Act, 1982*;
6. a hearing of this matter on an expedited basis;
7. an order that there be no costs of this proceeding; and
8. such further and other relief as counsel may advise and as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:***Overview***

1. This application arises out of the federal government's decision to invoke the *Emergencies Act* to quell protests centered in Ottawa, Ontario, and at various border crossings, as well as to pre-empt further action elsewhere.
2. The *Emergencies Act*, when properly invoked, grants an extraordinary amount of power to the executive branch of the federal government. The Act was intended to address situations of war, invasion, and other national emergencies that are so exigent and threatening that they cannot be dealt with under existing laws or through typical democratic processes.
3. Since the passage of the *Emergencies Act* in 1988, Canada has faced numerous national crises. There have been terrorist attacks, economic collapses, and a pandemic. All of these situations were dealt with using existing laws and normal democratic processes, or, when absolutely necessary, municipal or provincial emergency powers. There have also been national protest movements that occupied public spaces and city streets for months and blockaded critical infrastructure such as railways — essential democratic activity that frequently supports marginalized communities' struggles for equality and justice. These too have been responded to within the context of existing laws.
4. The federal government argues that the current situation is different — that the protests currently occurring in Canada are distinct from other previous national crises, so much

so that they can justify resort to the federal *Emergencies Act* for the first time in Canadian history.

5. The *Emergencies Act*, however, contains stringent preconditions for its invocation. In recognition of the extreme nature of the powers that it grants and the risk of overreach and misuse, the legislative drafters included very high legal thresholds that had to be met before the powers under the Act could be used. Those thresholds have not been met. There is no nationwide public order emergency within the meaning of the Act. The protests can be, and in many cases already have been, managed under existing Canadian law. The government's proclamation of a national emergency on February 14, 2022, and the orders flowing from that proclamation, are therefore unlawful and unconstitutional.
6. The protests at issue began in late January 2022 when, following the imposition of a COVID-19 vaccine mandate for truck drivers crossing the Canada-United States border, a convoy of vehicles began travelling from British Columbia to Ontario. This convoy has since become known as the "Freedom Convoy". By January 28, 2022, the Freedom Convoy had arrived in Ottawa, along with thousands of loosely affiliated and unaffiliated protestors. It is now apparent that the protests take aim at measures beyond the vaccine mandate for cross-border truck drivers and raise more general concerns about governmental and regulatory responses to the pandemic.
7. As the protests in Ottawa continued into February, similar but smaller local protests sprang up in other parts of Canada, including in Winnipeg, Manitoba, and Enfield and Halifax, Nova Scotia. The most notable of these local protests included the blockading

- of ports of entry at the Ambassador Bridge in Windsor, Ontario, a provincial highway in Sarnia, Ontario, the Peace Bridge in Fort Erie, Ontario, and international border crossings at Emerson, Manitoba, and Coutts, Alberta.
8. Many individuals involved in these protests have been entirely law-abiding and peaceful. Many others have engaged in forms of non-violent disruptive action that have had a significant and at times harmful impact on local residents, including: blockading roadways; driving vehicles slowly, thereby disrupting traffic; chanting; marching; sitting-in on city streets; erecting structures in public space; and creating noise by honking horns. There have also been disturbing reports of individual protestors or small groups of people engaging in violent and discriminatory acts. In Coutts, Alberta, for example, the RCMP discovered a cache of guns, ammunition, and body armour which led to the immediate arrest of 13 individuals. In Ottawa, there have been reports that some of the protesters engaged in physical and verbal harassment, as well as intimidation on the basis of race and property destruction on the basis of homophobic bias. This has been deeply disturbing to residents of Ottawa and people across the country, and in particular has created fear amongst racialized and marginalized communities. There is no doubt that these incidents are more than disruptive — they are dangerous, harmful, and unacceptable.
9. Given this context, it is no surprise that many municipal and provincial governments, along with local police services across the country, have actively worked to manage the situations in their respective jurisdictions. The government of Ontario has instituted a state of emergency and made it an offence to disrupt critical infrastructure, while Nova Scotia's government has issued an emergency directive prohibiting protestors

- from blockading or disrupting traffic. Police across the country have been called in to prepare for and respond to protests in numerous cities, where they have successfully limited disruptions to essential services while still ensuring that protestors can exercise their peaceful assembly rights. The courts have also been active, issuing injunctive relief targeting some of the most disruptive and harmful behaviour.
10. In sum, the vast majority of protests across this country have been handled by local authorities using existing laws, and indeed several provinces have stated that resorting to the *Emergencies Act* is unnecessary. Despite this fact, the federal government nevertheless proclaimed the existence of a public order emergency throughout the country.
 11. The legislative thresholds have not been met and, for that reason, the *Emergency Proclamation* is unreasonable and *ultra vires*.
 12. Legal resort to these powers requires that the executive have a reasonable basis for believing that there is (a) a threat to the security of Canada and (b) that threat is serious enough to be a national emergency. This requires showing, among other things, that the lives, health, or safety of Canadians has been seriously endangered, and that neither the provinces nor existing law are capable of dealing with that danger. The extraordinary powers granted under the *Emergencies Act* are reserved for unforeseen circumstances that the numerous laws and regulations of this country cannot address. Protests and demonstrations — even loud and lengthy ones — do not fall within this category.

13. The government has failed to discharge its burden to establish either a threat to the security of Canada or a national emergency. The *Emergencies Act* does not permit the government to proclaim an emergency based on unspecified concerns about economic instability and international trade, a general sense of public unrest, or donations to a cause from people outside of Canada. Even the presence of a small number of dangerous individuals in specific locations, while deeply concerning and a proper priority for law enforcement officials, would not be enough to justify the proclamation of a *nation-wide* emergency. A proclamation of emergency cannot be grounded in nebulous or strained claims about unspecified danger.
14. Moreover, the provinces have shown that they are capable of dealing with the protests using existing law. The fact that some protests remained for longer than others, or were more disruptive than others, is not in and of itself an indication of a lack of capacity or legal powers. The most economically disruptive forms of protest, such as the blockades at ports of entry to Canada, were largely resolved with provincial powers and prior to the *Emergency Proclamation*. Likewise, the armed faction in Coutts was neutralized.
15. While the federal government and many Canadians may disagree with the nature and extent of the various municipal and provincial responses, this disagreement is no justification for resorting to the *Emergencies Act* to take control of provincial powers and blur the lines that federalism firmly draws.
16. The decision to invoke the *Emergencies Act* must also be scrutinized in light of the sweeping *Charter* implications of the regulations made in reliance on the *Emergency Proclamation* (i.e., the *Emergency Measures Regulations* and the *Emergency*

Economic Measures Order). These regulations inhibit protest in a manner that offends the fundamental freedoms of free expression, peaceful assembly, and association. Many protests, including those brought by communities who often have no other way of having their concerns heard, are both largely peaceful and intensely disruptive. Such protests are an essential part of life in a vibrant democracy. The regulations at issue here also undermine protest by conscripting certain institutions into funneling protestors' financial information to the RCMP and CSIS, contrary to the right to be free from unreasonable search and seizure. These regulations apply everywhere in Canada, despite the fact that the protests are focused in discrete areas.

17. Accordingly, the government's resort to its emergency powers cannot be justified in relation to the factual and legal constraints at play. Ultimately, the exercise of executive power here lacks the intelligibility and justification necessary to survive judicial review by this Court.

The Emergencies Act

18. The *Emergencies Act* empowers the Governor in Council to proclaim, among other things, a "public order emergency".
19. A public order emergency is defined in s. 16 of the *Emergencies Act* and arises where two objective threshold requirements are met.
20. First, there must be "threats to the security of Canada". This phrase has the meaning ascribed by s. 2 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23, which sets out four types of threats:

(a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,

(b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,

(c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and

(d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

21. However, “threats to the security of Canada” do *not* include “lawful advocacy, protest or dissent”, unless it involves any of the activities referred to above.
22. Second, the situation must be serious enough to constitute a “national emergency”, which is defined in s. 3 of the *Emergencies Act* as follows:

For the purposes of this Act, a national emergency is an urgent and critical situation of a temporary nature that

(a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or

(b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

23. Section 17(1) of the *Emergencies Act* authorizes the Governor in Council to proclaim a public order emergency upon believing, on reasonable grounds, that such an emergency exists and necessitates the taking of special temporary measures. In the

event that the effects of the emergency do not extend to the whole of Canada, s. 17(2)(c) requires that the proclamation specify the area(s) of Canada to which the emergency extends.

24. While the proclamation of a public order emergency persists, s. 19(1) of the *Emergencies Act* supplies the Governor in Council with the power to make such orders or regulations as are believed to be necessary for dealing with the emergency. However, pursuant to s. 19(3), this power must be exercised or performed in a manner that will not unduly impair the ability of any province to take measures for dealing with an emergency in the province and with the view of achieving, to the extent possible, concerted action with each province.

The Emergency Proclamation

25. The *Emergency Proclamation* was issued on February 14, 2022, pursuant to s. 17(1) of the *Emergencies Act*. It proclaimed that a public order emergency exists throughout the entirety of Canada.
26. The proclamation specifies that the emergency is principally the result of “blockades”. In particular, it states that the emergency is constituted of:

(a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

27. The proclamation also contemplates that certain special temporary measures may be necessary for dealing with the emergency, including “measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace”, “measures to authorize or direct any person to render essential services ... including services related to the removal, towing and storage of any vehicle ... that is part of a blockade”, and measures to authorize or direct any person to render essential services to relieve the impacts of the blockade”.
28. The *Emergency Proclamation* will remain in force for 30 days beginning February 14, 2022, unless it is revoked by a vote at the House of Commons or the Senate. From that point, it may be continued in accordance with the provisions of the *Emergencies Act*.

The Emergency Measures Regulations and the Emergency Economic Measures Order

29. On the basis that the *Emergency Proclamation* was effective, the *Emergency Measures Regulations* and the *Emergency Economic Measures Order* were enacted on February 15, 2022.
30. The *Emergency Measures Regulations* create four key prohibitions backed by the threat of conviction and imprisonment.
31. Section 2(1) prohibits participation in a public assembly that may be reasonably expected to lead to a breach of the peace by:
 - (a) the serious disruption of the movement of persons or goods or the serious interference with trade;
 - (b) the interference with the functioning of critical infrastructure; or
 - (c) the support of the threat or use of acts of serious violence against persons or property.
32. Section 3 prohibits foreign nationals from entering Canada with the intent to participate in or facilitate a s. 2 assembly.
33. Section 4(1) prohibits everyone from travelling to an area where a s. 2 assembly is taking place, subject to various exemptions (“Prohibition on Travel to an Assembly”).
34. Section 5 is perhaps the broadest prohibition of all, prohibiting anyone from directly or indirectly providing property to facilitate or participate in any s. 2 assembly or for the purpose of benefitting any person who is facilitating or participating in such an

assembly (“Prohibition on the Provision of Property”). This provision also extends to similar use, collection, making available, or inviting a person to provide such property.

35. Section 10(2) creates penalties for failure to comply with the *Emergency Measures Regulations*:

(2) In the case of a failure to comply with these Regulations, any peace officer may take the necessary measures to ensure the compliance and allow for the prosecution for that failure to comply

(a) on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or

(b) on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years or to both.

(“Prosecution Provision”)

36. The *Emergency Economic Measures Order* contains provisions that compound the impact of the *Emergency Measures Regulations*. Most importantly, s. 2(1) requires banks, credit unions, insurance companies, securities dealers, money services businesses, crowd-funding platforms, and payment service providers to freeze the assets and accounts of “designated person[s]” (the “Freezing Measures”). Designated persons include any individual who is engaged, directly or indirectly, in an activity prohibited by ss. 2 to 5 of the *Emergency Measures Regulations*. This freezing must occur immediately upon the coming into force of the *Emergency Economic Measures Order*.

37. Pursuant to s. 3 of the *Emergency Economic Measures Order*, the above institutions also have a duty to determine, on a continuing basis, whether they are in possession or

control of property owned, held, or controlled by or on behalf of a designated person. If they are, the institutions must register with the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), pursuant to s. 4(1). These entities must also disclose, without delay, to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service:

- (a) the existence of property in their possession or control that they have reason to believe is owned, held or controlled by or on behalf of a designated person; and
- (b) any information about a transaction or proposed transaction in respect of property referred to in paragraph (a).

The Emergency Proclamation Is Unreasonable and Ultra Vires

38. As with any exercise of authority granted by a federal statute, the *Emergency Proclamation* must be consistent with the scope of the statutory mandate and meet the requirements of its enabling legislation. In this regard, it fails.
39. The *Emergency Proclamation* is not justified in light of the legal and factual constraints that bear upon it, most notably the governing statutory scheme and the powers it confers, which broadly impact individuals’ *Charter*-protected rights.

Governing Statutory Scheme

40. The *Emergency Proclamation* fails to meet the two threshold requirements of the *Emergencies Act*: threats to the security of Canada and a national emergency.
41. The *Emergencies Act* requires that there be reasonable grounds to believe that these threshold requirements are met. This requires more than just speculation, suspicion,

- political pressure, or even apprehension — there must be an objectively reasonable belief based on compelling and credible evidence.
42. The first threshold requirement — that there be threats to the security of Canada — is not met. None of the four threats set out in the *Canadian Security Intelligence Service Act* are present. A public protest does not qualify as “espionage or sabotage”, as required by s. 2(a). Even if that protest were a “foreign influenced activity” simply because it is partly supported by crowdfunding from other countries, it is neither clandestine nor deceptive; it also does not, as a whole, involve a threat to any person, as required by s. 2(b). While it is true that the protest — like any protest — is designed to active to achieve a political objective, there is no compelling evidence that this objective is generally being pursued by acts of “serious violence”, as required by s. 2(c). And there is likewise no sustainable suggestion that the constitutionally established system of government in Canada is being imperilled by covert unlawful acts or an “overthrow by violence”, as required by s. 2(d).
 43. The second threshold requirement — that there be a “national emergency” — similarly is not met.
 44. How the protests and blockades seriously endanger the lives, health, or safety of Canadians, as required by the definition of “national emergency”, is not apparent from either the *Emergency Proclamation* or the explanation tabled pursuant to s. 58(1) of the *Emergencies Act*. Disruption does not meet this threshold, and the actions at issue have been generally peaceful. While the *Emergency Proclamation* refers to adverse effects on the Canadian economy, it fails to demonstrate any connection between those effects

and the lives, health, and safety of Canadians. Although the proclamation refers to a supply chain breakdown, there is no compelling evidence that Canadians will go without necessities in a way that would endanger them — particularly not now given that the situation at the Ambassador Bridge and those in Fort Erie, Ontario, and Coutts, Alberta, have been resolved. The same is true of the proclamation’s oblique reference to adverse effects on Canada’s “relationship with its trading partners”. Finally, while there is a reference to a potential violence and unrest, the government must have some basis — beyond a large gathering of dissenters — for considering this potential to be real and substantial. It does not.

45. Even if there were a basis for believing that certain of the protests cause sufficient danger, the federal government goes too far in suggesting that danger is present throughout the entirety of the country. At most, a few localities are facing the acute effects of the protests. The vast majority of the country is not affected, much less endangered, by the protests — and yet, every person in Canada is now living under a proclaimed public safety emergency, and is subject to the orders made on the basis of that emergency.
46. However serious or widespread the danger at issue truly is, it is unreasonable to contend that it “exceed[s] the capacity or authority of a province to deal with it”. The protests *can* be effectively dealt with under other laws of Canada. These are also essential elements of a “national emergency”.
47. Among other things, the criminal law is more than capable of addressing all of the federal government’s concerns, through specific offences like mischief, unlawful

assembly, causing a disturbance, or nuisance, as well as the powers concomitant to arrest. Municipal by-laws also operate to similar effect.

48. As recent judicial orders have shown, injunctions are available to restrain the conduct said to be creating an emergency. Injunctions have a long history of being resorted to in order to deal with demonstrations or protests that cause economic harm. In relation to the current protests, injunctions have been granted to restrain the use of horns and vehicle idling, to enforce by-laws regarding the same, and to force protestors to leave the Ambassador Bridge. This latter injunction in particular has proved effective: the Bridge is now open, and it was opened before the proclamation of any federal emergency.
49. All of the foregoing laws can also be bolstered by the imposition of a *provincial* state of emergency. This is the approach Ontario's government has taken. On February 11, 2022 — four days before the federal government's invocation of the *Emergencies Act* — an emergency was already declared in the Province of Ontario, pursuant to O. Reg. 69/22. The next day, O. Reg. 71/22 [*Critical Infrastructure and Highways Regulation*] was enacted. Among other things, this regulation enjoins individuals from impeding access to critical infrastructure and highways and extends to police officers the power to order individuals to do the same. The overlap of the *Critical Infrastructure and Highways Regulation* and the *Emergency Measures Regulations* belies the contention that the provinces did not have the capacity to address the protests at issue.
50. Moreover, the *Critical Infrastructure and Highways Regulation* is backed by the force set out in the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, s.

7.0.11, which creates substantial fines for the contravention of emergency orders or the obstruction of persons performing duties conferred by such orders:

Offences

7.0.11 (1) Every person who fails to comply with an order under subsection 7.0.2 (4) or who interferes with or obstructs any person in the exercise of a power or the performance of a duty conferred by an order under that subsection is guilty of an offence and is liable on conviction,

(a) in the case of an individual, subject to clause (b), to a fine of not more than \$100,000 and for a term of imprisonment of not more than one year;

(b) in the case of an individual who is a director or officer of a corporation, to a fine of not more than \$500,000 and for a term of imprisonment of not more than one year; and

(c) in the case of a corporation, to a fine of not more than \$10,000,000.

Separate offence

(2) A person is guilty of a separate offence on each day that an offence under subsection (1) occurs or continues.

51. To an extent, the Government's precipitous invocation of the *Emergencies Act* appears to have been motivated by its view that the provinces have not gone far enough in addressing intraprovincial protest. However, this does not mean that the provinces lack the *capacity* or *authority* to deal with the protests, nor does it mean that that the laws of Canada are *incapable* of dealing with them. To the contrary, the provinces have all the tools they need. The *Emergencies Act* was not intended to provide the federal government a pathway to arrogate provincial powers to itself in circumstances where the provinces do not exercise those powers in the way the federal government would

have. Use of the Act in this way strains the balance that federalism demands and exceeds the intention behind the *Emergencies Act*.

Impact on Individuals' Charter-Protected Rights

52. The reasonableness of the Government's resort to the *Emergencies Act* must also have regard to the substantial, *Charter*-infringing impacts of the regulations that the *Emergency Proclamation* has enabled under s. 19(1) of the *Emergencies Act*.
53. The prohibitions set out in the *Emergency Measures Regulations* — namely, the Prohibition on Public Assembly, the Prohibition on Travel to an Assembly, and the Prohibition on Providing Property — offend fundamental freedoms enshrined in the *Charter*. In so doing, they inhibit basic and essential forms of democratic participation.
54. Each of these Prohibitions infringes s. 2(b) of the *Charter*, which protects freedom of expression. All of the prohibited activities contain expressive content, thereby falling within the protected sphere of free expression. The prohibition of those activities, in both purpose and effect, infringes that protection.
55. The Prohibition on Public Assembly and the Prohibition on Travel to an Assembly infringes s. 2(c) of the *Charter*, which protects freedom of peaceful assembly, for similar reasons. The former prohibition captures any assembly that may be “reasonably expected” to lead to a breach of the peace. In this way, it prohibits assembly *before it occurs* and before it becomes an assembly that *might* fall outside the scope of s. 2(d). By prohibiting assemblies that are by definition peaceful — or that at least have

- not yet become non-peaceful — and by prohibiting individuals (and, effectively, their children) from travelling to attend such assemblies, these prohibitions infringe s. 2(c).
56. Also for similar reasons, the Prohibition on Public Assembly and the Prohibition on Travel to an Assembly infringe s. 2(d) of the *Charter*, which protects freedom of association. These prohibitions prohibit individuals from meeting and forming associations, discouraging the collective pursuit of common goals and striking at the heart of this freedom.
 57. The Prosecution Provision of the *Emergency Measures Regulations* creates an offence punishable by imprisonment for failure to comply, thereby engaging the liberty interests protected by s. 7 of the *Charter*. This offence is not consistent with the principles of fundamental justice of overbreadth and gross disproportionality, as it captures peaceful protest that goes far beyond the objective of the regulations.
 58. The *Emergency Economic Measures Order* likewise creates serious, *Charter*-infringing impacts. Among other things, this regulation requires a battery of financial institutions and businesses to freeze or suspend accounts held by “designated persons” (i.e., persons “engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations*”). Moreover, s. 5 of the order conscripts financial institutions into disclosing — to the RCMP or CSIS — whether they are holding property that they believe is owned, held, or controlled by or on behalf of a designated person. As this section requires that the existence of this property and information related to it be delivered to the authorities without judicial authorization or

reasonable and probable grounds, it compels searches that are contrary to s. 8 of the *Charter*.

59. All of these measures are now in force and were also contemplated to varying degrees in the *Emergency Proclamation* itself.
60. The reasonableness of the federal government's decision to enact the *Emergency Proclamation* must have regard to these impacts on individuals' rights and interests. These concerns are central to the necessity of adequate justification — justification that is decidedly lacking here.
61. In light the above legal and factual constraints that bear upon it, the *Emergency Proclamation* is unreasonable and *ultra vires*.

The Emergency Measures Regulations and the Emergency Economic Measures Order Are Inconsistent with the Charter

62. On the basis set out above, each of the Prohibition on Public Assembly, the Prohibition on Travel to an Assembly, the Prohibition on Providing Property and the Prosecution Provision are inconsistent with various of s. 2(b), 2(c), and 2(d), and 7 of the *Charter*.
63. On the basis set out above, s. 5 of the *Emergency Economic Measures Order* is inconsistent with s. 8 of the *Charter*.
64. None of these infringements can be justified under s. 1. The pressing and substantial objective pursued by the regulations at play here must be to end the protests and the blockades and to address their impacts. However, particularly in light of the alternative

measures available and the application of these orders to the entirety of the country, the regulations cannot be said to be minimally impairing of the rights at issue, nor can they be said to be proportionate to their objective.

The CCLA Meets the Test for Public Interest Standing

65. The Applicant, the Canadian Civil Liberties Association (“CCLA”), brings this application on the basis of public interest standing.
66. The CCLA is an independent, non-profit, non-governmental organization that is dedicated to actively defending and promoting the recognition of fundamental human rights and civil liberties.
67. Since its inception in 1964, the CCLA has been holding governments accountable by ensuring those rights and freedoms are fostered and observed and that the rule of law is upheld. It advocates on behalf of all people in Canada to ensure that the critical balance between civil liberties and competing public and private interests are maintained.
68. The CCLA has made vital contributions to civil liberties and *Charter* jurisprudence in a variety of areas, by intervening in cases before courts at many levels. The CCLA has also been granted standing to litigate issues in its own right as a public interest litigant. The CCLA has a distinct, unique awareness and understanding of many aspects of civil liberties, as a result of arguing for the rights of people across Canada for decades.

69. The CCLA has a genuine interest in the issues raised in the Application as they are directly connected to the organization's mandate. The CCLA is engaged closely with these issues through its legal and policy advocacy, public education, and research.
70. Through litigation as a public interest litigant or as an intervenor, the CCLA has gained knowledge and expertise in the civil liberties and constitutional rights engaged by the federal government's invocation of the *Emergencies Act*, particularly in relation to free expression and assembly. CCLA has frequently been involved in litigation and policy debates that implicate the right to protest and consider the permissible nature and scope of state conduct in relation to protest activities.
71. The CCLA has the resources to pursue this judicial review thoroughly, effectively, and expeditiously. The CCLA is being represented by able and experienced counsel with the capacity to manage litigation of this nature. It will present a complete record that will assist this Court in making the findings of fact necessary to resolve the legal questions regarding interpretation of the *Emergencies Act* thresholds that lie at the heart of this case.
72. The immediate effect and serious consequences of the government's decision to invoke the *Emergencies Act* on the rights and freedoms of people across Canada requires an immediate consideration of the legality of that decision. It is reasonable and effective for the CCLA, with its decades of demonstrated interest in, and established expertise regarding, the issues raised in this application, to bring it forward in this timely manner.
73. Such further and other grounds as counsel may advise.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

1. the Affidavit of Abby Deshman; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

February 18, 2021



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Lawyers for Applicant

Court File No.: T-347-22

FEDERAL COURT

BETWEEN:

CANADIAN CONSTITUTION FOUNDATION

Applicant

– and –

ATTORNEY GENERAL OF CANADA

Respondent



Application for Judicial Review under Sections 18 and 18.1 of the
Federal Courts Act, R.S.C. 1985, c. F-7.

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, **WITHIN 10 DAYS** after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 23, 2022

Issued by:  Digitally signed by
ahmed, imrana
Date: 2022.02.23
09:31:14 -05'00'

Imrana Ahmed, Registry Officer

Address of local office: 180 Queen Street West
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Toronto, Ontario
M5V 3L6

TO: ATTORNEY GENERAL OF CANADA
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West
Suite #400
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APPLICATION

This is an Application pursuant to section 18.1 of the *Federal Courts Act*, RSC c F-7 for judicial review of: (a) the *Proclamation Declaring a Public Order Emergency*, SOR/2022-20 (“*Emergency Proclamation*”), made pursuant to section 17(1) of the *Emergencies Act*, RSC 1985, c 22 4th Supp (“the *Emergencies Act*”); (b) the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21 (“*Emergency Measures*”), made pursuant to section 19(1) of the *Emergencies Act*; and (c) the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (“*Economic Measures*”), made pursuant to section 19(1) of the *Emergencies Act*.

THE APPLICANT MAKES APPLICATION FOR:

1. An order declaring unlawful and quashing the *Emergency Proclamation*.
2. An order declaring unlawful and quashing the *Emergency Measures*.
3. An order declaring unlawful and quashing the *Economic Measures*.
4. An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring the *Emergency Measures* to be unconstitutional and of no force or effect.
5. An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring the *Economic Measures* to be unconstitutional and of no force or effect.
6. An order pursuant to Rule 383 of the *Federal Courts Rules*, SOR/98-106 assigning this proceeding to case management.
7. An order pursuant to Rule 306 of the *Federal Courts Rules* to admit the affidavit of Madeleine Ross.
8. An order pursuant to Rule 105 of the *Federal Court Rules* that this proceeding be joined with *Canadian Civil Liberties Association v. Attorney General of Canada*, Court File No. T-316-2.
9. An order directing the Respondent to deliver the Record to the Applicant on an urgent basis pursuant to Rule 317 of the *Federal Courts Rules*, because of the inherently time limited nature of a public order emergency.

10. An order directing the Respondent to deliver those portions of the record to the Applicant over which it asserts any privileges under Rule 318, including pursuant to sections 38 (national security) and 39 (cabinet confidences) of the *Canada Evidence Act*, RSC 1985, c C-5, on an urgent, counsel-only basis pursuant to a confidentiality undertaking, because of the inherently time limited nature of a public order emergency.
11. The hearing of this matter on an expedited basis, because of the inherently time limited nature of a public order emergency.
12. An order that there be no costs of this proceeding.
13. Such further and other relief as counsel may advise and as this Honourable Court may deem just.

THE GROUNDS FOR THE APPLICATION ARE:

A. Overview

1. This is an urgent Application for Judicial Review of the federal cabinet's decision to trigger and exercise the extraordinary powers contained in the *Emergencies Act* on February 14 and 15, 2022.
2. The *Emergencies Act* has a dark and troubled history in Canada. The *Emergencies Act* was originally enacted in 1988 to replace the *War Measures Act* ("WMA"), which was used during the Second World War to intern Japanese Canadians and Italian Canadians, and which was abused during the FLQ Crisis in Quebec in 1970. In direct response to this history, the *Emergencies Act* sets out a carefully crafted and demanding set of legally binding conditions that must be satisfied before it may be triggered, to ensure that it is used only as an absolute last resort, and for not a moment longer than necessary.
3. The *Emergencies Act* has never been invoked before. Over the decades since it was passed, Canada has weathered terrorist attacks, economic hardship, and an unprecedented global health pandemic without ever needing to resort to the incredible powers contained in the *Emergencies Act*.
4. The question on this Application is whether the strict legal requirements of the *Emergencies Act* were met before the federal cabinet issued the *Emergency Proclamation*, the

Emergency Measures, and the *Economic Measures*, in response to protests in Ottawa and border blockades.

5. We submit that the answer to that question is that those legal requirements were not met.

6. The *Emergencies Act* vests the federal cabinet with the extraordinary power to unilaterally proclaim a public order emergency. Such a proclamation serves *de facto* as a temporary constitutional amendment. Under the *Emergencies Act*, after the federal cabinet proclaims a public order emergency, vast legislative authority is delegated to the cabinet. This authority encompasses the power to create new criminal offences and police powers, without recourse to Parliament, advance notice or public debate. The *Emergencies Act* also grants the federal cabinet legislative power in core areas of provincial jurisdiction, such as property and civil rights, without any requirement for provincial consultation or consent.

7. Because of its profound effects on Canada's federal democracy, the grave risk of executive overreach, and the government's past abuse of emergency powers that this legislation was specifically intended to prevent, the courts should regard the *Emergencies Act* as a quasi-constitutional statute and interpret it strictly.

8. The federal cabinet did not have reasonable grounds for concluding there was a public order emergency that justified invoking the *Emergencies Act*, no matter how challenging and difficult it perceived the ongoing protests to be. Invoking the *Emergencies Act* was not absolutely necessary, as the law requires. Federal, provincial and municipal law enforcement already had all of the legal tools and authorities they needed to respond to the protests. Their perceived failure to respond effectively does not in itself authorize the government to invoke the *Emergencies Act*. The stringent conditions set by the *Emergencies Act* for declaring a public order emergency, and thus triggering the vast powers contemplated by the *Emergencies Act*, were not met.

9. In addition, the *Emergency Measures* and the *Economic Measures* violate the *Charter*. First, the prohibitions created by the *Emergency Measures* impose the threat of fine or imprisonment on a broad range of conduct, and, in so doing, risk a chilling effect on otherwise legitimate forms of expression. Second, the *Economic Measures* require banks to disclose otherwise private banking information to the police. Under the law, this amounts to a warrantless and unreasonable search of the private banking information of Canadian citizens. Both the

Emergency Measures and the *Economic Measures* create clear violations of sections 2, 7 and 8 of the *Charter*, and do not constitute reasonable limits that can be demonstrably justified in a free and democratic society.

B. Chronology of Key Events Leading up to the invocation of the *Emergencies Act*

i) Ottawa Protests: Before the Emergency Proclamation

10. On January 28, 2022, the “Freedom Convoy 2022” (“Convoy”) arrived in Ottawa. The Convoy was comprised of people from across Canada who intended to protest Canada’s public health response to the COVID-19 pandemic and the new vaccination requirements for cross-border truckers.¹ The Convoy’s arrival in Ottawa was not a surprise. Its route to Ottawa was widely publicized.²

11. Over the ensuing days, the protests in Ottawa grew. The blocking of public roadways by protestors violated both the *Criminal Code* and the *Highway Traffic Act*, RSO 1990 c H.8. Mischief under section 430 of the *Criminal Code*, for example, makes it a criminal offence for someone to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property.

12. On January 31, 2022, Prime Minister Trudeau spoke with Ottawa Mayor Jim Watson about the Convoy and its illegal occupation of the downtown core.

13. By February 5, 2022, the Royal Canadian Mounted Police (“RCMP”) had provided “fresh reinforcements” to the Ottawa Police Service (“OPS”) at its request, in the form of 257 officers, from its detachment in Ottawa.³ The RCMP National Headquarters is also located in Ottawa.

14. The next day, on February 6, 2022, the City of Ottawa declared a state of emergency. Ontario Premier Doug Ford told the press that the provincial government was supporting Ottawa in whatever way it could, but that Ottawa had not asked the province to request military aid from the federal government.⁴

¹ Exhibit A, Affidavit of Madeleine Ross.

² Exhibit B, Affidavit of Madeleine Ross.

³ Exhibit C, Affidavit of Madeleine Ross.

⁴ Exhibit D, Affidavit of Madeleine Ross.

15. On February 7, 2022, the first of several trilateral meetings took place between the federal government, Mayor Watson, and the Ottawa Police Chief.⁵ Mayor Watson also wrote to the federal government asking for an additional 1800 RCMP and Ontario Provincial Police (“OPP”) officers.⁶

16. On February 12, 2022, the OPS announced the establishment of an enhanced “Integrated Command Centre” (ICC) that brought together the OPS, OPP and RCMP in response to the protests in Ottawa, “to coordinate enforcement” and “to make the most effective use of the additional resources our policing partners have provided us”, which “will result in a significantly enhanced ability of our police service to respond to the current situation in our city.”⁷

17. On February 15, 2022, Justice McWatt of the Ontario Superior Court of Justice issued an interlocutory injunction pursuant to s. 440 of the *Municipal Act*, RSO 1990, c M.45, in response to an application brought by the City of Ottawa, enjoining individuals from breaching the following By-laws of the City of Ottawa: Open Air Fire By-law 2004-163, Fireworks By-law 2003-237, Noise By-law 2017-255, Use and Care of Roads By-law 2003-498, and the Idling Control By-law 2007-266.⁸

18. Following the establishment of the ICC, and with the help of the additional resources provided by the OPP and the RCMP, the OPS began charging protestors. The charges include:

- (a) Tyson Billings: charged under the *Criminal Code* with mischief (section 430), counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464), obstruct police (section 129) and counselling to commit the offence of obstruct police (section 464).⁹
- (b) Patrick King: charged under the *Criminal Code* with mischief (section 430), counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464) and counselling to commit the offence of obstruct police (section 464).¹⁰
- (c) Tamara Lich: charged under the *Criminal Code* with counselling to commit the offence of mischief (section 464).¹¹

⁵ Exhibit E, Affidavit of Madeleine Ross.

⁶ Exhibit F, Affidavit of Madeleine Ross.

⁷ Exhibit H, Affidavit of Madeleine Ross.

⁸ Exhibit Z, Affidavit of Madeleine Ross.

⁹ Exhibit G, Affidavit of Madeleine Ross.

¹⁰ Exhibit I, Affidavit of Madeleine Ross.

¹¹ Exhibit J, Affidavit of Madeleine Ross.

- (d) John Barber: charged under the *Criminal Code* with counselling to commit the offence of mischief (section 464), counselling to commit the offence of disobey court order (section 464) and counselling to commit the offence of obstruct police (section 464).¹²

19. As of February 21, 2022, Ottawa police had arrested and charged 196 people pursuant to offences under the *Criminal Code* and had towed 115 trucks.¹³ It is unclear whether even a single protester in Ottawa was charged with any offences created by the *Emergency Measures*.

ii) *Blockade of the Ambassador Bridge in Windsor, Ontario*

20. On February 7, 2022, protestors began a blockade at the Ambassador Bridge in Windsor. The bridge is Canada's busiest border crossing with the United States. Windsor Police responded immediately with a large police presence to monitor the demonstrations.

21. The next day, on February 8, 2022, Windsor Police issued a press release warning protesters that those "found committing crimes and acts of violence will be investigated and charges will be laid" and that steps taken would include "enforcement of traffic related offences and investigating any criminal acts."¹⁴

22. Two days later, the Windsor Police issued a press release explicitly outlining the various criminal offences that the protestors were potentially committing:

The Windsor Police Service wants to make demonstrators clearly aware that it is a criminal offence to obstruct, interrupt or interfere with the lawful use, enjoyment, or operation of property. The offence itself is known as mischief to property. The unlawful act of blocking streets at and near the Ambassador Bridge is resulting in people being denied the lawful use, enjoyment and operation of their property and causing businesses to close down. We are providing notice that anyone blocking streets or assisting others in the blocking of streets may be committing a criminal offence and must immediately cease further unlawful activity or you may face charges. You could be arrested if you are a party to the offence or assisting others in the direct or indirect commission of this offence. Vehicles or other property related to an offence may be seized. Once a vehicle is seized, it may be detained and, following a conviction, possibly forfeited.¹⁵

23. On February 10, 2022, Prime Minister Trudeau spoke with the Mayor of the City of Windsor and had another call with the Premier of Ontario Doug Ford. It is unclear what if any

¹² Exhibit K, Affidavit of Madeleine Ross.

¹³ Exhibit L, Affidavit of Madeleine Ross.

¹⁴ Exhibit M, Affidavit of Madeleine Ross.

¹⁵ Exhibit N, Affidavit of Madeleine Ross.

assistance Windsor sought from the federal government, and what the federal government's response was. That same day, auto industry groups with the support of the City of Windsor sought an injunction from the Ontario Superior Court of Justice to end the blockade.

24. On February 11, 2022, Chief Justice Morawetz granted the injunction, and ordered that the "Police or designated agents shall have authorization to remove any vehicles, personal property, equipment, structures, or other objects that impede or block access to the Ambassador Bridge and approaching roadways."¹⁶

25. By February 13, 2022, without any resort to the *Emergencies Act*, the Ambassador Bridge was fully reopened.

26. According to the Windsor Police, from February 7 to 13, 2022, 90 people were arrested and charged. The charges were laid under existing *Criminal Code* offences and included: 43 people charged with breaching a court order (section 127); 43 people charged with mischief over \$5,000 (section 430); one person charged with obstructing justice (section 139); one person charged with failing to attend court (section 145); and one person charged with dangerous driving (section 320.13). One person is facing a *Highway Traffic Act* charge for failing to remain (section 200(1)(a)).¹⁷

iii) Blockade in Coutts, Alberta

27. On January 29, 2022, a blockade began in Coutts, Alberta at the United States-Canada border. The Coutts protest was widely publicized. Alberta RCMP were aware of the planned blockade and had some time to plan their own response, which included having RCMP officers at the border for the duration of the blockade.¹⁸

28. On February 5, 2022, the Alberta Minister of Municipal Affairs, the Honourable Ric McIver, wrote a letter to the federal Minister of Public Safety, Marco Mendicino, and federal Minister of Emergency Preparedness, William Blair. Mr. McIver explained that Alberta's plan going forward was for the RCMP and partner law enforcement agencies to remove demonstrators and bystanders, which would allow for the removal of the vehicles and equipment obstructing the

¹⁶ Exhibit O, Affidavit of Madeleine Ross.

¹⁷ Exhibit FF, Affidavit of Madeleine Ross.

¹⁸ Exhibit P, Affidavit of Madeleine Ross.

highway. The only support that Mr. McIver sought from federal authorities was “provisions” in the form of equipment and personnel: “To support this approach, I am requesting federal assistance that includes the provision of equipment and personnel to move approximately 70 semi-tractor trailers and approximately 75 personal and recreational vehicles from the area.”¹⁹ It is unclear whether and how the federal government responded to Mr. McIver’s request.

29. On February 14, 2022, the Alberta RCMP executed search warrants and arrested several people involved in the Coutts protest. The arrests all appear to have taken place under the authority of the *Criminal Code* or provincial legislation. That day, the Alberta RCMP cleared the blockade and restored the border crossing.

iv) *Blockade at Sarnia Blue Water Bridge, Ontario*

30. On February 8, 2022, two groups of protests blocked the provincial highway leading to and from the Sarnia Blue Water Bridge, a border crossing. However, ten hours later, the OPP was able to clear the blockade and restore access to the border.

31. On February 9, 2022, a group created a highway blockade approximately 30 kilometres east of Sarnia on the provincial highway. Five days later, on February 14, 2022, the blockade was stopped and access to the highway was restored.

v) *Blockade at Emerson, Manitoba*

32. On February 10, 2022, protesters began blocking the Canada-United States border at the port of entry at Emerson, Manitoba. The next day, Manitoba Premier Heather Stefanson wrote to Prime Minister Trudeau seeking immediate and effective federal action regarding the blockade. Premier Stefanson did not specify what the federal action should look like, but she did welcome discussion on potential “federal-provincial collaborative action”.²⁰

33. By February 16, 2022, the blockade was completely cleared. In a press release, the RCMP explained that throughout the previous six days, officers used “open communication, and a measured approach to find a peaceful resolution to [the] situation” and said that because of these efforts, it had been able to coordinate and escort vehicles out of the area. The press release also

¹⁹ Exhibit Q, Affidavit of Madeleine Ross.

²⁰ Exhibit S, Affidavit of Madeleine Ross.

noted that in successfully clearing the blockade, the Manitoba RCMP worked collaboratively with the CBSA, US Customs and Border Protection, and Manitoba Transportation and Infrastructure.²¹

vi) *Blockade at the Peace Bridge at Fort Erie, Ontario*

34. On February 12, 2022, a protest targeted the Peace Bridge port entry at Fort Erie, Ontario. The protest disrupted inbound traffic at the border for part of that day, and then outbound traffic until February 14, 2022, by which date the Niagara Police cleared the blockade and restored access to the border.²²

vii) *Blockade in Surrey, British Columbia*

35. On February 12, 2022, several vehicles broke through an RCMP barricade in Surrey, British Columbia on their way to the Pacific Highway port of entry. Protesters forced the highway to close at the Canada-United States border in Surrey. On February 13, 2022, the Surrey RCMP arrested four protesters for “mischief”.²³ By February 19, 2022, the border had reopened.²⁴

viii) *Ontario Measures in Response to the Protests and Blockades*

36. On February 11, 2022, the Province of Ontario declared a state of emergency pursuant to O.Reg. 69/22 under the *Emergency Management and Civil Protection Act*, RSO 1990, c E9.²⁵ At a press conference, Premier Ford said that he would convene cabinet and “urgently enact orders that will make crystal clear it is illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.”²⁶ On February 12, 2022, the Ontario government confirmed the state of emergency (O. Reg. 70/22)²⁷ and promulgated O.Reg. 71/22, making it illegal and punishable to block and impede the movement of goods, people and services along critical infrastructure.²⁸

²¹ Exhibit R, Affidavit of Madeleine Ross.

²² Exhibit A at p. 8, Affidavit of Madeleine Ross.

²³ Exhibit T, Affidavit of Madeleine Ross.

²⁴ Exhibit U, Affidavit of Madeleine Ross.

²⁵ Exhibit AA, Affidavit of Madeleine Ross.

²⁶ Exhibit V, Affidavit of Madeleine Ross.

²⁷ Exhibit DD, Affidavit of Madeleine Ross.

²⁸ Exhibit EE, Affidavit of Madeleine Ross.

37. On February 20, 2022, the Province of Ontario brought an application in the Superior Court of Justice for an order pursuant to section 490.8 of the *Criminal Code*. The Court issued the order, which prohibited people from disposing, or otherwise dealing with, donations made through the Freedom Convoy and Adopt-a-Trucker campaign pages on the “GiveSendGo” online fundraising platform.²⁹

ix) Nova Scotia Measures in Response to the Blockades

38. On January 28, 2022, the Nova Scotia Minister of Municipal Affairs and Housing issued Direction 22-003 (road blockade ban) pursuant to section 14 of the *Emergency Management Act*, SNS 1990, c 8, prohibiting protests from blockading a highway near the Nova Scotia-New Brunswick border. Failure to comply with the Direction could result in a summary conviction with fines between \$3000 and \$10 000 for individuals.³⁰

39. On February 4, 2022, the Nova Scotia Attorney General and Minister of Justice promulgated N.S. Reg. 16/2022, pursuant to section 8 of the *Summary Proceedings Act*, RNS, c 450, to make the prohibitions in Direction 22-003 (road blockade ban) summary conviction offences.³¹

x) The Deputy Director of FINTRAC Testifies at the House of Commons Regarding the Protests and Blockades

40. On February 10, 2022, Barry McKillop, the Deputy Director of Intelligence of the Financial Transactions and Reports Analysis Centre (“FINTRAC”), testified at the House of Commons Public Safety and National Security Committee about the protests taking place across the country, and the concerns about how these protests were being funded.

41. Mr. McKillop explained that while crowdfunding sites are not a regulated money service business (“MSB”) under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, when those sites transact with or through businesses that are MSBs, e.g., payment processing platforms such as Stripe or PayPal, those MSBs would be able to submit reports identifying transactions that are suspicious and would submit such reports to FINTRAC.³² Mr.

²⁹Exhibit W, Affidavit of Madeleine Ross. See also Exhibit GG, Affidavit of Madeleine Ross.

³⁰ Exhibit BB, Affidavit of Madeleine Ross.

³¹ Exhibit CC, Affidavit of Madeleine Ross.

³² Exhibit X, Affidavit of Madeleine Ross, at 13:43:18 to 13:43:50.

McKillop testified that to date, FINTRAC had not seen a spike in suspicious transaction reporting in relation to the Ottawa protests.³³

C. The History of the *Emergencies Act*

42. The exercise of emergency powers by the federal cabinet has been deeply troubled throughout Canada's history. The *War Measures Act* was the direct predecessor to the *Emergencies Act* and was in force between 1914 and 1988.³⁴ During that time, Canada spent close to two decades under federal emergency legislation.

43. Professor Patricia Peppin of Queen's University's Faculty of Law describes that the *War Measures Act* "superseded all existing laws, provided overarching powers for cabinet to govern through regulation, and permitted overriding the normal operation of the federal system." Ultimately, the act was used to support censorship and to permit internment:

The *War Measures Act* was used to impose censorship, to outlaw socially unacceptable organizations, to legalize retroactively the actions taken by the military during the Quebec City conscription riots, to impose preventive detention, to allow the deportation of Canadian-born people of Japanese ancestry, to permit the internment of thousands of Japanese Canadians, to authorize the confiscation of Japanese Canadians' property under the guise of expropriation for compensation, the registration and internment of alien enemies in both World Wars, and the detention of persons who belonged to 'unlawful associations' like the Communist Party.³⁵

44. The *Emergencies Act* was drafted to ensure these abuses never happened again by protecting parliamentary democracy, federalism, and individual rights. The overarching principle behind the specific provisions of the *Emergencies Act* is proportionality. Every provision of the Act is designed with the intent of limiting the federal cabinet's power to declare an emergency to only those situations where it is absolutely necessary, to grant to the cabinet only the powers it needs to deal with the particular emergency, and for the powers to exist for only as long as the emergency exists.

³³ Exhibit X, Affidavit of Madeleine Ross, at 13:54:00 to 13:54:36.

³⁴ The *War Measures Act* was in fact a series of statutes – the *War Measures Act, 1914*, SC 1915; *War Measures Act*, R.S.C. 1927, c 206; *National Emergency Transitional Powers Act, 1945*, SC 1945; *National Emergency Transitional Powers Act, 1945*, SC 1945; *Emergency Powers Act*, SC 1951, c 5 and SC 1952-53, c 33; *War Measures Act*, RSC 1970, c W-2; and the *Public Order (Temporary Measures) Act 1970*, SC 1970-72, c 2.

³⁵ Exhibit Y, Affidavit of Madeleine Ross.

45. The Act defines a “national emergency” as “an urgent and critical situation of a temporary nature that”:

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it; or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada”; and
- (c) “cannot be effectively dealt with under any other law of Canada”.

46. The Act creates four different kinds of national emergencies: public welfare emergencies, public order emergencies, international emergencies, and war emergencies. Each type of emergency must satisfy additional conditions before the federal cabinet can proclaim it. Each type of emergency confers different powers on the federal cabinet.

47. In this case, federal cabinet has proclaimed a public order emergency. A public order emergency is “an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency” (section 16). “Threats to the security of Canada”, in turn, are defined by the *Canadian Security Intelligence Security Act*, RSC 1985, c C-23, section 2 as:

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage;
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada.

48. The federal cabinet may declare a public order emergency if it “believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency” (section 17).

49. When a declaration of public order emergency is in effect, the federal cabinet may make “orders or regulations” on the following matters if it “believes, on reasonable grounds” that such measures “are necessary for dealing with the emergency” (section 19(1)):

- (a) the regulation or prohibition of:

- (i) any public assembly that may reasonably be expected to lead to a breach of the peace,
- (ii) travel to, from or within any specified area, or
- (iii) the use of specified property;
- (b) the designation and securing of protected places;
- (c) the assumption of the control, and the restoration and maintenance, of public utilities and services;
- (d) the authorization of or direction to any person, or any person of a class of persons, to render essential services of a type that that person, or a person of that class, is competent to provide and the provision of reasonable compensation in respect of services so rendered; and
- (e) the imposition:
 - (i) on summary conviction, of a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both that fine and imprisonment, or
 - (ii) on indictment, of a fine not exceeding five thousand dollars or imprisonment not exceeding five years or both that fine and imprisonment,
 for contravention of any order or regulation made under this section.

D. The *Emergency Proclamation*, *Emergency Measures*, and *Economic Measures*

50. The federal government issued the *Emergency Proclamation* on February 14, 2022. The Proclamation declared that a public order emergency exists “throughout Canada” and “necessitates” the taking of special temporary measures for dealing with the emergency.

51. The *Emergency Proclamation* describes the “emergency” as consisting of five elements:

- (a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada;
- (b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings;
- (c) the adverse effects resulting from the impacts of the blockades on Canada’s relationship with its trading partners, including the United States, that are detrimental to the interests of Canada;

- (d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number; and
- (e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians.

52. The *Emergency Proclamation* goes on to describe the special temporary measures as consisting of:

- (a) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure;
- (b) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and the provision of reasonable compensation in respect of services so rendered;
- (c) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade;
- (d) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference;
- (e) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and
- (f) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

53. The House of Commons confirmed the *Emergency Proclamation* on February 21, 2022.

54. The *Emergency Measures* and the *Economic Measures* were promulgated on February 15, 2022. Together, they set out the prohibitions and powers created by the invocation of the *Emergencies Act*.

55. The *Emergency Measures* creates four prohibitions:

- (a) A person must not participate in a public assembly that may reasonably lead to a breach of peace or causing a person under the age of 18 to participate in such an assembly, by the serious disruption of the movement of persons or goods or the serious interference with trade the interference with the functioning of critical infrastructure, or the support of the threat or use of acts of serious violence against persons or property (section 2);
- (b) A foreign national must not enter Canada with the intent to participate in or facilitate such an assembly (section 3);
- (c) A person must not travel to or within an area where such an assembly is taking place, or causing a person under the age of 18 to travel to, or within 500 metres of such an assembly (section 4); and
- (d) A person must not, directly or indirectly, use collect, provide, make available or invite a person to provide property to facilitate or participate in such an assembly, or for the purpose of benefiting any person who is facilitating or participating in such an assembly (sections 5).

56. The *Emergency Measures* also direct people, in exchange for fair compensation, to assist the Minister of Public Safety and Emergency Preparedness, the Commissioner of the RCMP, or anyone acting on their behalf, with removing, towing and storing any objects that are part of a blockade (sections 7, 8 and 9).

57. A failure to comply with the *Emergency Measures* allows for prosecution on summary conviction or by indictment. Summary prosecution carries a possible punishment of a fine not exceeding \$5,000 or imprisonment not exceeding 6 months. Prosecution by indictment carries a possible punishment of a fine not exceeding \$5000 or a term of imprisonment not exceeding 5 years (section 10(2)).

58. The *Economic Measures* require financial “entities” listed therein (section 3) to cease dealing in any property that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of a “designated person”; cease facilitating any related transactions; cease making available property (including funds or virtual currency); and cease providing any financial or related services to or for the benefit of a designated person (section 2). A designated person is someone who is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures* (section 1).

59. The *Economic Measures* also require entities to determine on a continuing basis whether they are in possession or control of property that is owned, held or controlled by or on behalf of a

“designated person” (section 3). Entities are required to register with FINTRAC and to report every suspicious financial transaction (section 4), and to disclose to the Commissioner of the RCMP the existence of property in their possession or control that they have “reason to believe” is owned, held or controlled by or on behalf of a designated person and any information about a transaction or proposed transaction in relation to this property (section 5). The *Economic Measures* offer no guidance on how the entities should interpret the phrase “reason to believe”. They immunize the entities from civil liability when complying with the *Economic Measures*.

E. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* are unlawful

60. The *Emergency Proclamation* and *Emergencies Measures* are unlawful because they do not meet the key requirement of necessity in the *Emergencies Act*. It simply cannot be established that the situation that the invocation of the *Emergencies Act* was intended to address could not have been handled effectively under existing Canadian law.

61. One of the key justifications for invoking the *Emergencies Act* was the impact that border blockades were having on international trade and international relations. But in reality, the border blockades at the Ambassador Bridge, Coutts, Emerson, the Peace Bridge, Sarnia, and Surrey were cleared by police using existing provisions under the *Criminal Code* and provincial laws, including *Highway Traffic Act* legislation. The blockades were all effectively resolved without recourse to the powers granted by the *Emergencies Measures*, and there are currently no border blockades.

62. In clearing the border blockades, every single charge the police have laid thus far has been under the *Criminal Code* and existing provincial legislation, and not a single charge has been laid using the allegedly indispensable new offences created under the *Emergencies Act*.

63. Future border blockades can be effectively addressed in the same way, through the use of existing legislation and the exercise of existing federal and provincial authority. Recourse to the extraordinary powers granted by the *Emergencies Measures* is simply not necessary.

64. Similarly, to address the protests in Ottawa, the federal government already had the power to provide officers to the Ottawa Police Service and to establish a joint command with the OPS and OPP in Ottawa, and it in fact did exercise these powers prior to the *Emergency Proclamation*. In addition, section 129(b) of the *Criminal Code* makes it an offence for a person, without

reasonable excuse, to refuse to assist a police officer in the execution of their duty. This could apply to tow truck drivers who refuse to assist police by making their vehicles available as needed to preserve the peace.

65. Again, the efficacy of existing legislation and authority in addressing the protests in Ottawa is made clear by the fact that every single charge that was laid when the police moved in to end the blockades was laid under existing *Criminal Code* provisions. Not a single charge has been laid pursuant to the *Emergency Measures*.

66. The federal and provincial government also already had the ability to take steps to limit the financing of future illegal protests. The existing authority of FINTRAC over payment processing platforms already requires these platforms to report suspicious transfers to and from crowdfunding sites. In addition, the Attorney General already has the power to make an application for a restraint order under section 490.8 of the *Criminal Code*, which would prevent a person from disposing of, or otherwise dealing with, any interest in offence-related property.

67. When Parliament passed the *Emergencies Act* in 1988, it did so in full recognition of this country's dark history of abuse under the *War Measures Act*. It specifically sought to make sure the *Emergencies Act* would not be used unless it was absolutely necessary, and it stipulated that the powers under the *Emergencies Act* should never be invoked unless existing law was truly incapable of dealing with the problem. There is simply no evidence that this standard was met in this case. In fact, the way in which the protests were actually dealt with and resolved gives us every reason to believe that resort to the *Emergencies Act* was unnecessary.

F. The *Emergency Proclamation*, *Emergencies Measures*, and *Economic Measures* Violate the *Charter*

68. One of the reasons why emergency powers ought to be invoked only in extraordinarily rare circumstances is that emergency powers often lead to abuses of individual rights. Canada's history under the *War Measures Act* provides ample evidence of that. In this case, the reasonableness of the Government's invocation of the *Emergencies Act* must take into account whether the *Emergency Measures* and the *Economic Measures* violate the *Charter*. Both sets of measures create serious violations of core democratic rights and other freedoms, under sections 2, 7, and 8 of the *Charter*.

i) *Section 2 of the Charter*

69. Sections 2, 4 and 5 of the *Emergency Measures*, and section 2 of the *Economic Measures*, all violate the core democratic rights to freedom of expression, association, and assembly guaranteed by sections 2(b), (c), and (d) of the *Charter*.

70. The rights to expression, assembly, and association created by section 2 of the *Charter* have been interpreted purposively, in the broadest possible terms. The *Emergency Measures*' prohibitions on attending assemblies and engaging in fundraising — as either a donor or a solicitor of donations — amount to clear cut violations of these rights. Similarly, section 2 of the *Economic Measures* is designed to discourage and prevent participation in these constitutionally protected activities, which also amounts to a violation of these rights. It will therefore fall to the government to justify these violations under section 1 of the *Charter*.

71. Under section 1, these prohibitions will fail because they are not minimally impairing, and their deleterious effects outweigh their salutary benefits. Section 2 of the *Emergency Measures* criminalizes participation in a demonstration that *might* — in the future — “reasonably be expected to lead to a breach of the peace.” The *Emergency Measures* provide no guidance on how to determine whether a breach of the peace can be “reasonably expected.”

72. It is clear that these measures have been invoked in response to protests against government measures taken in response to the COVID-19 pandemic — and in particular the use of illegal blockades during these protests. Going forward, however, it is entirely unclear how the government will enforce the *Emergency Measures* and *Economic Measures*, and what evidence or intelligence will be used to satisfy a reasonable belief that a breach of the peace might occur. For example, if protests were organized in response to the government’s invocation of the *Emergencies Act*, would it be possible for the government and the police to conclude there is a reasonable expectation that a breach of the peace might occur at these protests, given what has just taken place in the previous protests? Reasoning along these lines is not far-fetched, and it risks chilling legitimate speech and demonstration by instilling fear in those who might otherwise wish to participate in lawful demonstrations against government actions.

73. It also seems clear from the wording of the *Emergency Measures* that someone could be charged and convicted of an offence under this section for participating in a demonstration that

never actually resulted in a breach of the peace. This is because the provision does not merely criminalize or prohibit participation in a demonstration where a breach of the peace actually occurs, . Rather, it targets situations where it is reasonably believed such a breach might occur.

74. Similarly, the section draws no distinction between those protestors who actually participate in a breach of the peace, and those who do not. The only intent required by the prohibition is an intention to participate in the public assembly as a whole — and not the actual breach of the peace that *might* possibly occur. In other words, if someone attends a public demonstration with the sole intention of standing on the front lawn of Parliament holding up a sign expressing their opinion, they would be guilty of a criminal offence if other protestors decided to block the roads in a way that offended the prohibition. Similarly, they would be guilty of an offence if it could simply be reasonably expected that an event might occur, even if it does not actually occur, and even if they had no intention of participating in such an event did it occur.

75. This prohibition is not minimally impairing because it goes further than necessary. Instead of targeting actually unlawful conduct that constitutes a breach of the peace, it prohibits any participation — even peaceful participation — in a protest where state officials “reasonably believe” a breach of the peace might occur.

76. Sections 4 and 5 of the *Emergency Measures*, and section 2 of the *Economic Measures*, rely on the same definition of unlawful assembly, and similarly fail to minimally impair *Charter* rights as a result.

ii) *Section 7 of the Charter*

77. Sections 2, 4 and 5 of the *Emergency Measures* violate section 7 of the *Charter*. These prohibitions are deprivations of the right to liberty because they carry with them the threat of significant jail sentences. These deprivations are not in accordance with the principles of fundamental justice, because they are overbroad and/or have effects that are grossly disproportionate to the objectives of the prohibition.

iii) *Section 8 of the Charter*

78. Sections 4 and 5 of the *Economic Measures* violate section 8 of the *Charter*. Section 4 requires financial institutions to register with FINTRAC if they are in possession of property that

is owned by or held on behalf of a person who has participated in an unlawful assembly (i.e. a “designated person” under the *Economic Measures*) and to report to FINTRAC if they have reasonable grounds to suspect that a transaction has been conducted relating to the commission of a money laundering or terrorism related offence. Section 5 requires financial institutions to report to the RCMP and to CSIS “the existence of property in their possession or control” that they have reason to believe is owned, held or controlled by or on behalf of a person who is participating in an unlawful assembly.

79. Canadian citizens and permanent residents enjoy a reasonable expectation of privacy over the information that banks hold about them, including the details of the accounts that they hold, the funds they possess, and the ways they spend their money. By requiring financial institutions to provide such information to CSIS and to the RCMP, these provisions of the *Economic Measures* constitute a search.

80. These search provisions violate section 8 of the *Charter* because they do not comply with the Supreme Court’s decision in *Hunter v. Southam*, [1984] 2 SCR 145. *Hunter v. Southam* held that for a statutory provision authorizing a search to be reasonable under the *Charter*, it must require prior judicial authorization based on reasonable grounds. Sections 4 and 5 of the *Economic Measures* do not make any provision for prior judicial authorization before the search takes place, nor do they define the standard upon which a financial institution must satisfy itself that it is dealing with a “designated person” before turning that person’s financial information over to CSIS and the RCMP.

G. The Canadian Constitution Foundation Meets the Test for Public Interest Standing

81. The Canadian Constitution Foundation (CCF) brings this application on the basis of public interest standing. The federal government’s invocation of the *Emergencies Act* has a serious effect on the constitutional rights and freedoms of Canadians across the country.

82. Founded in 2002, the CCF is an independent, national, and non-partisan registered charity whose mission is to protect constitutional freedoms. The CCF furthers this mission through education, communication, and litigation.

83. In keeping with its mandate, the CCF has accumulated significant public interest litigation experience. The CCF has appeared before all levels of court in Ontario and Canada and has made

significant contributions to constitutional law jurisprudence. The CCF has been granted intervener status by the Supreme Court of Canada in 13 cases.

84. The CCF has also been granted standing to litigate issues in its own right as a public interest litigant. Just last year, the CCF was the applicant on a successful constitutional challenge to various provisions of the *Elections Act*, in *Canadian Constitution Foundation v. Canada (Attorney General)*, 2021 ONSC 1224.

85. The CCF has a genuine interest in this Application because it is directly connected to the organization's protective mandate. The CCF also has the experience and expertise needed to efficiently and effectively conduct the litigation surrounding this judicial review. The CCF has started similar actions before, knows what will be involved, and has the resources to pursue this Application.

86. The invocation of the *Emergencies Act* and its impact on the constitutional rights of all Canadians creates an urgent need for this Application and a consideration of the legality of the underlying decision. The CCF will use its expertise and experience to ensure the issues are raised and resolved through expeditious proceedings.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL

70. Affidavit of Joanna Baron dated February 22, 2022;

71. Affidavit of Madeleine Ross dated February 22, 2022;

72. Such further and additional materials as the Applicant may advise and this Honourable Court may allow.

Rule 317 Request: The Applicant requests that the Respondent send certified copies of the following materials that are not in the possession of the Applicant, but are in the possession of the Respondent, to the Applicant and the Registry:

1. The record of materials before the Governor in Council in respect of the *Emergency Proclamation*.
2. The record of materials before the Governor in Council in respect of the *Emergency Measures*.

3. The record of materials before the Governor in Council respect of the *Economic Measures*.

February 22, 2022



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Counsel for the Applicant



Court File No.: T-382-22

FEDERAL COURT

JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD RISTAU

Applicants

- and -

GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, ATTORNEY GENERAL
OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Respondents

APPLICATION UNDER Sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and Rules 301
of the *Federal Courts Rules*.**NOTICE OF APPLICATION***Service of a copy hereof admitted*

TO THE RESPONDENTS:

*this ____ day of ____**____ 20 ____*A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the
Applicants appears on the following page. *Solicitor for ____*

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicants' solicitor, or where the Applicants is self-represented, on the Applicants, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

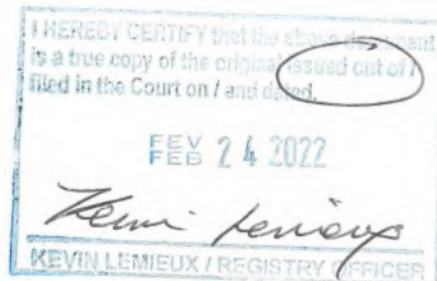
Date: February 23, 2022

ORIGINAL SIGNED BY
KEVIN LEMIEUX
A SIGNÉ L'ORIGINAL

Issued by: _____
(Registry Officer)

Address of local office: Thomas D'Arcy McGee Building
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TO: Attorney General of Canada
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APPLICATION

1. This is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondents' declaration that a "public order emergency" exists under s.17(1) of the *Emergencies Act* (R.S.C., 1985, c. 22 (4th Supp.)) (the "**Emergencies Act**"). Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Special Temporary Measures for Public Order Emergency" issued February 14, 2022 with PC Number 2022-0106 (hereinafter the "**Valentine's Day Declaration**").

2. Further, and in the alternative, this is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondent's regulations passed under s.19(1) of the *Emergencies Act*. Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Emergency Economic Measures Regulations" issued February 15, 2022, with PC Number 2022-0107 and thereafter made into regulation SOR/ 2022-0021 (hereinafter the "**February 15 Regulations**").

3. Further, and in the alternative, this is an Application for Judicial Review pursuant to sections 18(1), 18.1 and 18.2 of the *Federal Courts Act* R.S.C., 1985, c. F-7 of the Respondent's Order-in-Council passed under s.19(1) of the *Emergencies Act*. Specifically, the Applicants seek judicial review of the Order-in-Council subject title "Emergency Measures Order" issued February 15, 2022, with PC Number 2022-0108 and thereafter made into regulation SOR/ 2022-0022 (hereinafter the "**February 15 Economic Order**").

4. Further, and in the alternative, this is an Application for a declaration of invalidity of any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order.

5. Further, and in the alternative, this is an Application for a declaration that the *Emergencies Act* is inconsistent with s.91, s.92 and s.96 of the *Constitution Act*, 1867, 30 & 31 Vict, c 3 (the "**Constitution Act, 1867**") and s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the "**Charter**" and "**Constitution**").

Act, 1982", respectively), and to the extent of those inconsistencies, is of no force and effect pursuant to s.52(1) of the *Constitution Act, 1982*.

6. Further, this an Application for interlocutory relief pursuant to s.18.2 of the *Federal Courts Act* for an injunction, stay, or order in the nature of a writ of *prohibition* prohibiting or enjoining any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order from having legal effect until the herein proceedings are complete.

7. The Applicants state, and the fact is, the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order, collectively or individually:

- (a) are *ultra vires* the provision of the *Emergencies Act* or any other enabling statute or instrument;
- (b) are *ultra vires* s.91 of the *Constitution Act, 1867*;
- (c) violate s.96 of the *Constitution Act, 1867*;
- (d) violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter*;
- (e) violate s.1 of *Canadian Bill of Rights S.C. 1960, c. 44*;
- (f) violate constitutional principles, specifically rule of law, constitutionalism, parliamentary sovereignty, separation of powers, and contractual expectations (hereinafter "**constitutional principles**");
- (g) violate the preamble of the *Emergencies Act*;
- (h) violate the *International Covenant on Civil and Political rights*, specifically Articles 1(2), 2, 4, 5, 7, 8, 9, 10(1), 12(1), 16, 17, 18, 19, 22(1), 26 and 47;
- (i) violate the *International Covenant on Economic, Social and Cultural Rights*, specifically Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25; and
- (j) violate international law obligations, specifically principles of customary international law including the general principle of the rule of law, the principle of non-discrimination, the United Nations Declaration of Human Rights, freedom from fear and international human rights norms (hereinafter "**international law obligations**").
- (k) violate the *Vienna Convention on the Law of Treaties*.

As a result, the Applicants make this application for:

8. The following relief:

- (a) An order abridging the time for the service of this Application, if necessary;
- (b) An order for an expedited hearing;
- (c) An order pursuant to section 18.1(3)(a) of the *Federal Courts Act* quashing, any or all, of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order;
- (d) A declaration that any or all of the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are *ultra vires* the provision of the *Emergencies Act* or any other enabling statute or instrument;
- (e) A declaration pursuant to section 52(1) of the *Constitution Act*, 1982, that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are of no force and effect to the extent of their inconsistency with any or all of s.91, s.92 and s.96 of the *Constitution Act*, 1867; s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Canadian Charter of Rights and Freedoms* as read in conformity with Articles 1(2), 2, 4, 5, 7, 8, 9, 10(1), 12(1), 16, 17, 18, 19, 22(1), 26 and 47 of the *International Covenant on Civil and Political Rights*; Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*, and constitutional principles and international law obligations;
- (f) A declaration that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are construed and applied as not to abrogate, abridge or infringe or authorize the abrogation, abridgment or infringement of any of the rights or freedoms recognized and declared as per s.2 of the *Canadian Bill of Rights* due to infringing of s.1 of the *Canadian Bill of Rights*;
- (g) A declaration that any or all, of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order are void for vagueness under s.7 of the *Charter* or otherwise;
- (h) An interim injunction preventing the Valentine's Day Declaration, February 15 Regulations, and the February 15 Economic Order from having any force or effect in Canada until the entirety of the herein proceedings are complete;

- (i) Should the Valentine's Day Declaration, February 15 Regulations and February 15 Economic Order lapse before the herein application is heard, or the *lis* be otherwise *prima facie* moot, an order that the matter proceed in full notwithstanding it is technically moot, on the grounds that the matters in issue are of public importance and their determination is in the public interest. Further, there will remain an adversary context that helps guarantee the issues are well and fully argued by parties who have a stake in the outcome. Further, judicial economy supports it, and hearing the matter is within the Court's proper adjudicative role;
- (j) Costs; and
- (k) Such further and other relief as counsel may advise and this Honourable Court deems just and equitable.

THE GROUNDS FOR THIS APPLICATION ARE:

The Parties

9. The Applicant, Jeremiah Jost, has participated in peaceful protest in and around Parliament Hill in Ottawa since January 29, 2022. He intends to continue protesting at Parliament Hill until all the federal government Covid vaccine mandates are lifted. He has also engaged in financial support of other protest participants in Ottawa, utilizing his bank account to receive and distribute funds.

10. The Applicant, Edward Cornell, is a decorated Canadian military veteran who had his bank account and credit card account searched, seized and frozen on the collective authority of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulation, and February 15 Economic Order.

11. The Applicant, Vincent Gircys, is a retired police officer who had his bank account and credit card account searched, seized and frozen on the collective authority of the *Emergencies Act*, Valentine's Day Declaration, February 15 Regulation, and February 15 Economic Order.

12. The Applicant, Reverend Harold Ristau, is a decorated Canadian military veteran and pastor who participated in the peaceful protest in and around Parliament Hill in Ottawa by leading participants in prayer, issuing a benediction and praying near a war memorial.

(hereinafter the "**Applicants**")

13. The Respondent, the Governor in Council, is the Governor General of Canada acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada pursuant to s.35(1) of the *Interpretation Act* RSC 1985, c I-21 (hereinafter the "**GIC**").

14. The Respondent, Her Majesty the Queen in Right of Canada, is the Crown referred to in the preamble of the *Constitution Act*, 1867, the common law, and s.2 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 (hereinafter the "**Crown**").

15. The Respondent, the Attorney General of Canada, is the officer and nominee of the Crown which proceedings against the Crown may be taken in the name of, pursuant to s.23(1) of the *Crown Liability and Proceedings Act* (hereinafter the "**AG**").

16. The Respondent, the Minister of Public Safety and Emergency Preparedness, is the officer and nominee of the Crown which proceedings against the Crown may be taken in the name of, pursuant to s.23(1) of the *Crown Liability and Proceedings Act* (hereinafter the "**Minister**"). The Minister is the Minister responsible for the *Emergencies Act*.

a. The Valentine's Day Declaration

17. Under provisions of the *Emergencies Act*, the GIC is authorized to take special temporary measures that may not be appropriate in normal times, where safety and security of the individual, the protection of the values of the body politic and the preservation of the sovereignty, security and territorial integrity is seriously threatened by a national emergency. In particular, under s.17 of the *Emergencies Act*, the GIC may by proclamation declare that a "*public order emergency exists*", but only when the GIC believes on reasonable grounds:

- (a) That a public order emergency exists; and
- (b) That a public order emergency necessitates the taking of special temporary measures for dealing with the emergency.

18. Pursuant to s.16 of the *Emergencies Act*, a “public order emergency” means an emergency that arises from:

(a) “threats to the security of Canada” as defined in s.2 of the *Canadian Security Intelligence Service Act* R.S.C., 1985, c. C-23 and are limited to:

- i. espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
- ii. foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- iii. activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- iv. activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (i) to (iv); and

(b) that is so serious as to be a national emergency.

19. On February 14, 2022 the GIC passed the Valentine’s Day Declaration under s.17(1) of the *Emergencies Act*. As per s.17(2) of the *Emergencies Act*, the Valentine’s Day Declaration is required to specify:

- a. concisely the state of affairs constituting the emergency;
- b. the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and
- c. if the effects of the emergency do not extend to the whole of Canada, the area of Canada to which the effects of the emergency extend.

20. The Valentine's Day Declaration cites the state of affairs constituting the emergency as follows:

- (a) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,
- (b) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,
- (c) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,
- (d) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and
- (e) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians;

21. The Valentine's Day Declaration specifies special temporary measures that the GIC anticipates may be necessary for dealing with the emergency the issuing Orders pursuant to section 19(1) of the *Emergencies Act*, including the following:

- (i) measures to regulate or prohibit any public assembly — other than lawful advocacy, protest or dissent — that may reasonably be expected to lead to a breach of the peace,

or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,

(ii) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered,

(iii) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,

(iv) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference,

(v) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the *Emergencies Act*; and

(vi) other temporary measures authorized under section 19 of the *Emergencies Act* that are not yet known.

(hereinafter collectively referred to as "**Anticipated Measures**" or individually referred to as "**Anticipates Measures (i)**" through **Anticipated Measures (vi)**)

22. The Valentine's Day Declaration specifies that the effects of the emergency extend to the whole of Canada, specifically it states a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency.

23. The Applicants state, and the fact is, the Valentine's Day Declaration is aimed at "blockades"—a term that is not specifically defined, but which are comprised of persons and their property carrying out advocacy, protest or dissent.

24. The Applicants state, and the fact is, that the Valentine's Day Declaration was issued by the GIC without reasonable grounds that public order emergency exists, therefore the Valentine's Day Declaration is *ultra vires* s.17(1) of the *Emergencies Act*. Particularly:

- (a) There are no reasonable grounds that blockades are activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state;
- (b) Adverse effects on the Canadian economy are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*;
- (c) Adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*;
- (d) The breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*; and
- (e) The potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians are not "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*; and
- (f) There are no reasonable grounds the blockades are "threats to the security of Canada" as defined in s.2 of the *Canadian Security Intelligence Service Act*.

25. Further, and in the alternative, there are no reasonable grounds the blockades are so serious as to be a national emergency. The Applicants state, and the fact is, in order for there to be a national emergency to issue the Valentine's Day Declaration, it requires there to be reasonable grounds that it can be said to be an urgent and critical situation adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces. The Applicants state, and the fact is, there are not reasonable grounds that the blockades are adversely affecting all Canadians and being of such proportions as to transcend the authority vested in the Legislatures of the Provinces.

26. The Applicants state, and the fact is, there are no reasonable grounds that the general laws under the *Criminal Code* R.S.C., 1985, c. C-46, and other federal, provincial, and municipal laws are inadequate to address the blockades.

27. In particular, the *Criminal Code* contains offence provisions that permit obtaining of orders from courts of criminal jurisdiction, and arresting subjects, where there are reasonable grounds to believe a person is committing or attempting to commit offences in relation to mischief, treason, sabotage, sedition, riot, unlawful assembly, kidnapping and murder. Further, the *Criminal Code* offences can result in arrest without warrant where there are reasonable grounds. Furthermore, each Province has trespass legislation and emergency management legislation. Furthermore, each municipality have numerous municipal bylaws to deal with blockades, and unlawful demonstrations. The Applicants states, and the fact is, there is simply no reasonable grounds that the *Criminal Code*, and other federal, provincial and municipal laws are or were inadequate to address the blockades.

28. Further, the Applicants state, and the fact is, there are no reasonable and probable grounds that the purported "public order emergency" extends to Canada as a whole. In particular, the blockades have occurred in five geographical finite areas. Particularly, two border crossings between Canada and the United States in Alberta and Ontario respectively, saw blockades spanning several days of duration. The blockade near the Ambassador Bridge in Windsor, Ontario was cleared by provincial and municipal police prior to the issue of the Valentine's Day Declaration. The blockade near Coutts, Alberta was voluntarily ceased by the participants shortly after the Valentine's Day Declaration was issued. Two smaller protests in the vicinity of border crossings near Surrey, British Columbia and Emerson, Manitoba, were resolved after a much shorter duration. The only enduring protest was in the Capital Region

(Ottawa). The Applicants state, and the fact is, there are no reasonable grounds of a national emergency based on same.

29. Further, the Applicants state, and the fact is, that the passing of the Valentine's Day Declaration based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

30. The Applicants state, and the fact is, the the Anticipated Measures listed in the Valentine's Day Declaration require the GIC to have reasonable and probable grounds those Anticipated Measures may be necessary for dealing with the public order emergency. The Applicants states, and the fact is, there is no such reasonable and probable grounds. Further, the Applicants state the Anticipated Measures are unlawful or unconstitutional. In particular, but not limited to:

- (a) Anticipated Measure (i) has no reasonable and probable grounds for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, and in the alternative, it violates s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter* as interpreted in accordance with Articles 2, 4,5, 9, 10(1), 12(1),16, 19, 22(1) and 26 of the *International Covenant of Civil and Political Rights*; Articles 2(2) and 5 of the *International Covenant of Economic and Social Rights*, constitutional principles and international law obligations; and s.1 of the *Canadian Bill of Rights*.
- (b) Anticipated Measure (ii) to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered is not a statutorily authorized special measure. Further, in the alternative, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague,

arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Further, and in the alternative, it violates s.2(b) of the *Charter* right to freedom of expression by compelling a person to engage in activity which will convey, and be understood to convey, a message which is not that person's voluntarily chosen expression. Further, in the alternative, it violates Articles 1(2), 4, 5, 8, 9, and 10(1) of the *International Covenant of Civil and Political Rights* in that it forces a person to carry out work against their will. Furthermore, it infringes of the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act*, 1867.

- (c) Anticipated Measure (iii) to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade is not a statutory authorized special measure. Further, there was no reasonable grounds for this special measure. Further, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Furthermore, it violates s.8 of the *Charter* by authorising extra-judicial searches and seizures of bank accounts. Further, an in the alternative, it violates Articles 1(2), 4, 5, 8, 9, 10(1) 16, 17 and 47 of the *International Covenant on Civil and Political Rights* and Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*.
- (d) Anticipated measure (iv) to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference infringes on the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act*, 1867.

- (e) Anticipated measure (v) to authorize the imposition of fines or imprisonment for contravention of any order or regulation made under s.19 of the *Emergencies Act* violates s.7 and s.9 of the Charter. Further it violates Articles 9 of the *International Covenant on Civil and Political Rights*. Furthermore, it violates s.1 of the *Canadian Bill of Rights*. In the alternative, it violates international law obligations.

31. Further, the Applicants state, and the fact is, that the Valentine's Day Declaration is passed as a mechanism to violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, and s.12 of the *Charter*.

32. Further, the statutory process for confirming the Valentine's Day Declaration pursuant to s. 58(1) and s.58(6) of the *Emergencies Act*, has been violated. The Valentine's Day Declaration must be confirmed by Parliament within seven sitting days after it has been issued and debated without interruption. The suspension of Parliament on February 19, 2022 is an abuse of process, contrary to the *Emergencies Act* provisions and *ultra vires*, and the Valentine's Day Declaration as confirmed by Parliament on February 21, 2022 is *void ab initio*.

b. February 15 Regulations

33. Pursuant to the Valentine's Day Declaration and s.19(1) of the *Emergencies Act* and on the recommendation of the Minister, the GIC annexed the February 15 Regulations on the belief that there were reasonable grounds that the regulation or prohibition of public assemblies was necessary.

34. Sections 2 to 5 of the February 15 Regulations outlines the 'prohibited activities' associated with public assembly for which any peace officer may take necessary measures to ensure compliance and allow for the prosecution for failure to comply.

35. Section 2(1) prohibits participation in a public assembly that may be reasonably expected to lead to a breach of the peace by:

- (a) the serious disruption of the movement of persons or goods or the serious interference with trade;

(b) the interference with the functioning of critical infrastructure; or

(c) the support of the threat or use of acts of serious violence against persons or property.

(hereinafter "**s.2 public assembly**")

36. Section 2(2) prohibits causing a minor to participate in a s.2 public assembly.

37. Section 3 prohibits a foreign national from entering Canada with the intent to participate in a s.2 public assembly.

38. 'Foreign National' has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act* "means a person who is not a Canadian citizen or a permanent resident and includes a stateless person."

39. Section 4(1) prohibits travel of anyone to or within an area where a s.2 public assembly is taking place.

40. Section 4(2) prohibits causing a minor to travel to or within 500 meters of an area where a s.2 public assembly is taking place.

41. Section 5 prohibits anyone from directly or indirectly providing property to facilitate or participate in a s.2 public assembly for the purpose of benefiting any person who is facilitating or participating in such a public assembly. This provision extends to anyone using, collecting, providing, making available or inviting any person for same.

42. Section 6 authorizes the designation of places to be protected and secured. These places are public places and range from the Parliament Hill, any government building, monuments, cemeteries, airports, railway stations, bus stations, ports, hospitals, trade corridors and international border crossings, to 'any other place' the Minister designates as protected.

43. Section 6 does not provide reasons for why places are to be designed as protected and to be secured. It reads as generally prohibiting access of areas from anyone on a vague and arbitrary basis.

44. Sections 7 and 8 authorize the Minister, the Commissioner of the Royal Canadian Mounted Police or any person acting on their behalf to compel anyone on a written request and to immediately on a request to remove, tow and store any vehicle, equipment, structure or object that is part of a "blockade".

45. Section 9(2) provides that anyone that suffers loss, injury or damage as a result of anything done under the February 15 Regulations may make an application for compensation in accordance with Part V of the *Emergencies Act*. At s.47(1) of Part V of the *Emergencies Act* it prevents action and proceedings for damages against a Minister, servant or agent of the Crown and any person providing services pursuant to orders and regulations made pursuant to s.19(1) of the *Emergencies Act*. Furthermore, s.48(2) includes a waiver of liability in that no compensation shall be paid to anyone unless they sign a release of any right of action.

46. Section 10 creates penalties for failure to comply with the February 15 Regulations and provides powers to peace officers to the extent that any police officer, police constable, constable, or other person employed for the preservation and maintenance of the public peace which can include the Royal Canadian Military Police, may take any necessary measures to ensure compliance with the February 15 Regulations and with any provincial or municipal laws and allows for the prosecution for the failure to comply. The penalties as per s.10(2) include:

- (a) on summary conviction, to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or
- (b) on indictment, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years or to both."

47. The Applicants state, and the fact is, that the passing of the February 15 Regulations based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

48. The Applicants state, and the fact is, the regulation and prohibition of public assemblies in the areas referred to in the February 15 Regulations require the GIC to have reasonable and probable grounds the provisions in the February 15 Regulations are necessary for dealing with the public order emergency. In particular, but not limited to:

- (a) There are no reasonable grounds for the Prohibited Activities in sections 2 to 5 of the February 15 Regulations for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, in the alternative, they violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8 and s.15 of the *Charter*; s.1 of the *Canadian Bill of Rights*; Articles 2, 4, 5, 8, 19, 10(1), 12(1), 16, 17, 19, 22(1) and 26 of the *International Covenant of Civil and Political Rights*; Articles 1(2), 2(2), 3, 4, 5, 11(1) and 25 of the *International Covenant of Economic and Social Rights*; constitutional principles and international law obligations.
- (b) The Designation of Protected Places as per section 6 of the February 15 Regulations is an abuse of state powers to secure and restrict access to public locations by using force, peace officers including Royal Canadian Mounted Police, police dogs, and intimidation tactics. Further, in the alternative, it violates s.7 of the *Charter* right to liberty and personal security by authorising the designation of any area as protected and to secure those areas by force in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Furthermore, it violates Articles 9, 10(1), 12 (1) and 18 of the *International Covenant on Civil and Political Rights* by depriving anyone from the conditions for every human being to enjoy civil and political freedom and freedom from fear.
- (c) The Directions on Essential Goods and Services outlined in sections 7 and 8 of the February 15 Regulations directing any person to render essential services to relieve the impacts of the blockade, including measures to regulate or to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, is not a statutory authorized special

measure and is *ultra vires*. Further, in the alternative, it violates s.7 of the *Charter* right to liberty by authorising the compulsion of a person to provide a service against their will in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice. Further, in the alternative, it violates s.2 of the *Charter* right to freedom of expression by compelling a person to engage in activity which will convey, and be understood to convey, a message which is not that person's voluntarily chosen expression. Further, in the alternative, it violates Articles 1(2), 2, 4, 5, 8, 9, 10(1), 12(1), 16, 17, 19 and 47 of the *International Covenant of Civil and Political Rights* in that it forces a person to carry out work against their will with criminal penalties for non-compliance. Further, in the alternative, it violates Articles 1(2), 2(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant on Economic, Social and Cultural Rights*.

- (d) The powers granted to peace officers in s.10 of the February 15 Regulations, including authorising the Royal Canadian Mounted Police to enforce compliance with the February 15 Regulations and with any municipal and provincial laws and allow for the prosecution of failure to comply infringes of the heads of power of the Provinces in 92(10), 92(13), and 92(16) of the *Constitution Act*, 1867 and constitutional principles. Furthermore, the penalties for failure to comply with vague and arbitrary provisions in the February 15 Regulations violates s.9 and s.12 of the *Charter*; s.1 of the *Canadian Bill of Rights*; Articles 7, 9, and 10(1) of the *International Covenant of Civil and Political Rights*; and international law obligations.

49. Further, the Applicants state, and the fact is, that the February 15 Regulations is passed as a mechanism to violate s.2(b), s.2(c), s.2(d), s.6, s.7, s.8, s.9, s.12 and s.15 of the *Charter*.

50. Further, the February 15 Regulations are *ultra vires* s. 91 of the *Constitution Act*, 1867, and the constitutional principles underlying written provisions of the Constitution of Canada.

c. February 15 Economic Order

51. Pursuant to the Valentine's Day Declaration and s.19(1) of the *Emergencies Act* and on the recommendation of the Minister, the GIC annexed the February 15 Economic Order on the belief that there were reasonable grounds that measures regarding property referred to therein are necessary. The February 15 Economic Order contains provisions that are tied to the February 15 Regulations.

52. The February 15 Economic Order applies to any individual or entity, including a corporation, trust, partnership, fund, unincorporated association or organization, or foreign state, that is engaged directly or indirectly in a s.2 public assembly.

53. The February 15 Economic Order force stops the provision of any financial services, insurance coverage, access to capital assets, digital assets, donations, and fundraising platform funds to anyone or entity indirectly or directly involved in a s.2 public assembly and any of the prohibited activities listed in sections 2 to 5 of the February 15 Regulations.

54. Section 2(1) requires that the following entities freeze accounts and access to assets belonging to anyone that owns, holds, or controls on behalf of anyone or entity directly or indirectly involved in any of the prohibited activities in relation to a s.2 public assembly: banks, including foreign banks as per the *Bank Act*; cooperative credit societies, savings and credit unions and caisses populaires regulated by a provincial Act and associations regulated by the *Cooperative Credit Associations Act*; insurance companies, including foreign insurance companies as per the *Insurance Companies Act* and other insurance companies regulated by a provincial Act; trust and fund companies as regulated the *Trust and Loan Companies Act* or as regulated by a provincial Act; loan companies as regulated by a provincial Act; entities that fall under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*; securities companies, portfolio management, investment and counselling services companies as per provincial legislation; fundraising platforms; virtual currency platforms; and electronic payment companies (hereinafter "**financial services entities**").

55. Furthermore, s.2(1) compels the financial services entities from February 15, 2022 to continuously monitor all financial activities of every customer in order to determine whether

any transaction or asset is tied to a person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly.

56. Section 4(1) compels all financial services entities not regulated by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, specifically fundraising platforms, virtual currency platforms and electronic payment companies (hereinafter the “**unregulated financial sector**”) to register with the Financial Transactions and Reports Analysis Centre of Canada (hereinafter “**FINTRAC**”) if they are in possession or control of property that is owned, held or controlled by or on behalf of a person or entity that is directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly. Furthermore, s.4(2) compels the unregulated financial sector to report to FINTRAC, any suspicious transaction on reasonable grounds and linked to any person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly. A suspicious transaction means a transaction related to a money laundering offence or a terrorist activity financing offence.

57. Section 4(3) further extends the breadth of reporting obligations for the unregulated financial sector by compelling sharing information with FINTRAC pursuant to s.30(1) and s.33(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

58. Section 30(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* set out reporting requirements for ‘money services business and foreign money services business’ for transactions of \$10,000 or more. Section 33(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* has been repealed and replaced with s.28 which refers to securities dealers that they must keep a virtual currency transaction record for any transaction of \$10,000 or more in virtual currency.

59. Section 5 compels all financial services entities, including the unregulated financial sector, to immediately disclose to the Commissioner of the Royal Canadian Mounted Police or to the Director of the Canadian Security Intelligence Service any information with regards to transactions and property owned, held or controlled by or on behalf of a person or entity directly or indirectly involved in a prohibited activity in relation to a s.2 public assembly and any information regarding related transactions. Similarly, s.6 authorizes any exchange information from the Government of Canada, provincial or territorial.

60. Section 6 provides full immunity of all financial services entities against civil proceedings or any proceedings under the *Emergencies Act*. This in fact means that there is full impunity from legal action and no recourse to remedies pursuant to Part V of the *Emergencies Act*.

61. The Applicants state, and the fact is, that the passing of the February 15 Economic Order based on the facts and circumstances herein, deprived the liberty and security interests of the Applicants, and all Canadians, in in a vague, arbitrary, overbroad and grossly disproportionate manner not in conformity with the principles of fundamental justice, and therefore violated s.7 of the *Charter*.

62. The Applicants state, and the fact is, the measures regarding property referred to in the February 15 Economic Order require the GIC to have reasonable and probable grounds that the measures are necessary for dealing with the public order emergency. In particular, but not limited to:

- (a) Interferences with personal property pursuant to s. 2 of the February 15 Economic Order have no reasonable and probable grounds for the same reasons as plead regarding the Valentine's Day Declaration itself. Further, in the alternative, they violate s. s.8 of the *Charter* and cannot be demonstrably justified in a free and democratic society, pursuant to s.1 of the *Charter*. Further, they violate s.1 of the *Canadian Bill of Rights* in that ever person has the right to enjoyment of property and the right no to be deprived thereof except by due process of the law. Further, they violate Articles 1(2), 4, 5, 16,17, 26 and 47 of the *International Covenant of Civil and Political and* Articles 1(2), 3, 4, 5, 6(1), 11(1) and 25 of the *International Covenant of Economic and Social Rights* in that the freezing and removal of access to personal property *inter alia* personal bank account, funds, capital, capital assets and digital assets is unlawful interference with a person's right to privacy and violates the inherent right of all peoples to enjoy and utilize fully and freely their wealth and resources. Furthermore, it violates *International Covenant on Civil and Political Rights* by depriving anyone from the conditions for every human being to enjoy civil and political freedom and freedom from fear. Further, these inferences

are inconsistent with constitutional principles, specifically rule of law and contractual expectations and international law obligations.

(b) Compelling the unregulated financial sector to register with FINTRAC and report suspicious transaction and share information in the same manner as regulated financial services do per the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* pursuant to s.4 of the February 15 Economic Order unlawfully delegates the powers of the Parliament to legislate to the Executive and violates s.91 of the *Constitution Act, 1987* and the *Statutory Instruments Act* R.S.C., 1985, c. S-22 by infringing on the jurisdiction of Parliament stated herein. Further the delegation of Parliament's jurisdiction is inconsistent with constitutional principles, namely parliamentary sovereignty, separation of powers, and rule of law.

(c) Compelling all financial services entities to disclose information to the Royal Canadian Mounted Police and the Canadian Security Intelligence Service goes beyond the scope of the *Emergencies Act* and undermines the principle of constitutionalism.

63. Further, the Applicants state, and the fact is, that the February 15 Economic Order is passed as a mechanism to violate s.8 of the *Charter* and s.1 of the *Canadian Bill of Rights*.

64. Further, the February 15 Economic Order deprived the Applicants, and all Canadians, of their fundamental rights to not be limited or abridged even in a national emergency is not in conformity of the preamble in the *Emergencies Act*, and therefore violated the *Canadian Bill of Rights*, the *International Covenant on Civil and Political Rights* and international law obligations.

65. Further, the February 15 Economic Order is *ultra vires* the *Emergencies Act* and violates the *Personal Information Protection and Electronic Documents Act* S.C. 2000, c. 5.

d. Emergencies Act

66. The invocation of the *Emergencies Act* for the first time in Canadian history has demonstrated that it is not fit for purpose in a parliamentary democracy and has failed the test for compliance with the *Canadian Constitution Act, 1982*, the *Canadian Constitution Act, 1987* and the *Charter*.

67. The Applicants state, and the fact is, the *Emergencies Act's* purpose was to prevent the abuses of civil liberties that had taken place under the *War Measures Act*. The Applicants state that the term "temporary special measures" throughout the *Emergencies Act* is void for vagueness under s.7 of the *Charter*.

The Applicants rely on the following statutory provisions, rules and principles:

68. *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

69. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

70. *Constitution Act, 1867*, 30 & 31 Vict, c 3.

71. *Canadian Bill of Rights S.C.* 1960, c. 44.

72. UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

73. UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.

74. *Interpretation Act RSC* 1985, c I-21.

75. *Statutory Instruments Act R.S.C.*, 1985, c. S-22.

76. *Personal Information Protection and Electronic Documents Act S.C.* 2000, c. 5.

77. *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18.1.

78. *Federal Courts Rules*. SOR/98-106.

This Application will be supported by the following material:

79. Affidavit of Jeremiah Jost, to be filed;

80. Affidavit of Edward Cornell, to be filed;

81. Affidavit of Vincent Gircys, to be filed;

82. Affidavit of Harold Ristau, to be filed; and

83. Such further and other affidavits and material as counsel may advise and this Honourable Court permits.

Pursuant to Rule 317 of the *Federal Courts Rules*, the Applicants request that the Respondents send the following material that is not in the possession of the Applicants but is in the Respondent's possession, to the Applicants and to the Registry:

84. The record of all documents and other materials before the GIC informing the Decision.

85. Such further and other material that may be in the possession, power or control of the Respondents and which may be relevant to these proceedings.

Date: February 23, 2022



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Court File No.: T-306-22

FEDERAL COURT

BETWEEN:

CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF KRISTEN NAGLE

I, Kristen Nagle, Registered Nurse and director and member of Canadian Frontline Nurses, of the City of London, Ontario SWEAR THAT:

1. I am an Applicant in these proceedings and as such have personal knowledge of the facts and matters hereinafter deposed to, save and except where same are stated to be based upon information or belief, and where so stated, I verily believe the same to be true.
2. The co-Applicant, Canadian Frontline Nurses, is a registered not-for-profit corporation.
3. Canadian Frontline Nurses is a proud advocate of medical freedom. Its mission is to unite nurses across Canada, educate the public and ensure that Canadian healthcare reflects the highest ethical standards.
4. Attached and marked as Exhibit “A” is a copy of the Certificate of Incorporation for Canadian Frontline Nurses.

Canadian Frontline Nurses and My Participation in the Freedom Convoy 2022 protests

5. I, together with other members of Canadian Frontline Nurses, arrived in Ottawa on January 28, 2022 to peacefully participate in the Freedom Convoy 2022 protests. We continued to participate in the Freedom Convoy 2022 protest in Ottawa until February 19, 2022.
6. Canadian Frontline Nurses is recognized as a participating group in the Freedom Convoy 2022 movement. Canadian Frontline Nurses was listed as a participating group on the main page of the Freedom Convoy 2022 website, which was accessible at www.freedomconvoycanada.com before the website was taken down. A printout of main Freedom Convoy 2022 website page, as it existed on February 22, 2022, is attached hereto and marked as Exhibit “B”.
7. On February 21, 2022, my Member of Parliament, Arielle Kayabaga of the Liberal Party of Canada, identified me as one of the key people involved in the Freedom Convoy 2022 protest in Ottawa.
8. My and Canadian Frontline Nurses’ participation in the Freedom Convoy 2022 protest was motivated by our desire to express solidarity with and provide support to the truckers who had travelled to Ottawa. We wished to join the truckers and other participants in the Freedom Convoy 2022 protest in Ottawa to engage in the peaceful expression of our opposition to unreasonable COVID-19 mandates and restrictions imposed by various levels of government.

9. It was my hope and the hope of Canadian Frontline Nurses that our assembly with likeminded individuals at the Freedom Convoy 2022 protest in Ottawa and our engagement in peaceful expressions of dissent would bring more awareness to, and engender more dialogue about, government-imposed COVID-19 mandates and restrictions.
10. The participants in the Freedom Convoy 2022 protest in Ottawa, including Canadian Frontline Nurses and me, do not believe that many of the COVID-19 mandates and restrictions that are in place are warranted. We believe that many of these mandates and restrictions are not supported by the science and that they do more harm than good.
11. We further hoped that our peaceful expressions of dissent and the increased public awareness of the issues that the Freedom Convoy 2022 movement was designed to spark would ultimately lead politicians in favour of the mandates and restrictions to reconsider their position.
12. Canadian Frontline Nurses and I wished to bring about the revocation of COVID-19 mandates and restrictions through our peaceful expression of dissent. I unequivocally do not support violence. Neither does Canadian Frontline Nurses. We denounce violence and do not view violence as a legitimate means of expression or as a means of achieving one's political ends.
13. I have not witnessed nor am I aware of any violence committed by the protestors in the Freedom Convoy 2022 assembly in Ottawa. I did however witness acts of serious violence committed by the police on February 18, 2022 and February 19, 2022 against the protestors

who had assembled in Ottawa. I was also assaulted by a woman who threw eggs at me and my family from the sixth story of an apartment building on February 20, 2022.

14. From January 29, 2022 to February 19, 2022, I assembled in the area where the Freedom Convoy 2022 protest was taking place in Ottawa every day except February 1, 2022. During this January 29, 2022 to February 19, 2022 period neither I nor anyone else from Canadian Frontline Nurses impeded the movement of any person or goods.
15. Neither I nor Canadian Frontline Nurses own or operate a truck. Nor did we park a truck in Ottawa.
16. During the Freedom Convoy 2022 protests in Ottawa, I made several speeches to voice my opposition to COVID-19 mandates and restrictions and in favour of freedom. A video of one of the speeches I made can be accessed from the following URL: <https://www.facebook.com/CanadianFrontlineNurses/videos/306993618075698>. A hyperlink to a downloadable version of this video is attached hereto and marked as Exhibit “C”.
17. To bring awareness of the Freedom Convoy 2022 protests in Ottawa participants’ peaceful expression of dissent, I routinely posted videos and made livestreams of the Freedom Convoy 2022 protest on my social media profiles, particularly Instagram.
18. My Instagram handle is kristen_nagle. As of the time of swearing this affidavit, I have over 40,000 followers. Many of the videos I have shared through my Instagram profile have been viewed tens of thousands of times.

19. Throughout my and Canadian Frontline Nurses' participation in the Freedom Convoy Protest in Ottawa, we solicited donations and distributed funds to truckers who were participating in the protest in Ottawa. We also provided material support in forms other than funds to these truckers including access to our hotel room at the Sheraton so that they could shower, rest, or drop off clothes to be laundered.
20. Some of the support we provided to truckers in Ottawa is documented in videos that are on my Instagram profile. The following is a list of videos which show myself on behalf of Canadian Frontline Nurses providing support to truckers participating in the peaceful Freedom Convoy 2022 protests in Ottawa:
- a. On January 31, 2022, I made a livestream video that is 10 minutes and 14 seconds in length. I spoke with a trucker who was sitting in his truck. Starting at the 4:17 mark of this video, I provided the trucker with my contact information and advised him that we would be happy to let him use our shower at our hotel room. Starting at the 9:31 mark of this video, I encouraged my viewers to help by providing truckers access to rooms and showers. This video is accessible on my Instagram at the following URL:
https://www.instagram.com/tv/CZYD4Teqw9b/?utm_medium=copy_link.
 - b. On February 8, 2022, I made a number of livestream videos showing me distributing funds that were given to Canadian Frontline Nurses to distribute to the truckers:
 - i. One video made on February 8, 2022 is 14 minutes and 17 seconds in length. In the first portion of this video, I spoke with a female trucker. At

the 12:39 mark of the video, I met with an individual named Austin. I provided him with funds that were given to Canadian Frontline Nurses to distribute to the truckers. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZudIfpLYMz/?utm_medium=copy_link.

- ii. One video made on February 8, 2022 is 14 minutes and 17 seconds in length. In the Instagram caption for this video, I stated “Spreading love today! Ottawa Feb 8th Can donate to Canadian Frontline Nurses Cfln@protonmail.com To help keep this going! Thank you everyone so much!” The video consists of me speaking to fellow peaceful protestors and walking around the protest site distributing funds to truckers participating in the Freedom Convoy 2022 protest in Ottawa that were donated to Canadian Frontline Nurses for this purpose. This video is accessible on my Instagram profile at the following URL:
- iii. One video made on February 8, 2022, is 7 minutes and 56 seconds in length. The video consists of me speaking to fellow protestors and walking around the protest site distributing funds to truckers participating in the Freedom Convoy 2022 protest in Ottawa that were donated to Canadian Frontline Nurses for this purpose. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZugz60lFJy/?utm_medium=copy_link.

iv. One video made on February 8, 2022 is 44 minutes and 39 seconds in length. In this video, I speak with fellow protestors and document the protest site, while distributing funds to trucker in the Freedom Convoy 2022 protest in Ottawa that were donated to Canadian Frontline Nurses for this purpose. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZu8AZVq1Rp/?utm_medium=copy_link

c. On February 10, 2022, I made a livestream video that is 9 minutes and 17 seconds in length to update and provide transparency to those who had entrusted Canadian Frontline Nurses with their donations to distribute to truckers. I shared screen time in my livestream with Michelle Kloet who was also fundraising in support for the truckers and arranging for their access to shower facilities at the Sheraton. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZzZRDsKBV8/?utm_medium=copy_link

d. On February 10, 2022, I made another livestream video that was 8 minutes and 41 seconds in length. In this video, I spoke with Brian Jordan who explained that the funds helped towards the purchase of a generator and to help fix the vehicle door of a participant in the Freedom Convoy 2022 protest in Ottawa. I also explained starting at the 7:10 mark of this video that the funds were applied to helping finance Canadian Frontline Nurses' stay at the Sheraton which enabled me to provide updates regarding the Freedom Convoy 2022 protest and offer showers, a place for rest, and a place to collect laundry for the truckers. I explained that we were also using our room that day to help nurse a trucker who had fallen ill to

health. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZ0cyk0qO-b/?utm_medium=copy_link

- e. On February 14, 2022, I made a livestream video that was 3 minutes and 59 seconds in length. In this video I shared stories regarding how the funds that were being donated to Canadian Frontline Nurses were being used to support the truckers. I explained that we were using our room at the Sheraton to offer food, hot coffee, and showers to the truckers. I also advised my viewers that we were going to spend Valentine's Day distributing donations to participants in the Freedom Convoy 2022 protests in Ottawa. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZ9hA16KH5m/?utm_medium=copy_link

- f. On February 14, 2022, I made another livestream video that is 17 minutes and 23 seconds in length. The video featured a trucker who expressed he was participating in the Freedom Convoy 2022 protests in Ottawa because he cannot work because of the federal vaccine mandate. Starting at the 11:45 mark of the video, the trucker explained the purpose of the donations, and how the donated funds are distributed. A copy of this video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZ9pjJ6KeXM/?utm_medium=copy_link

- g. On February 14, 2022, I made another livestream video that is 8 minutes and 14 seconds in length. The video featured my conversation with Shawn Jason Laponte, the founder of Druthers, who advised that he was intending to distribute funds to Truckers who were in dire need of funds, but that he discovered that his account with the Bank of Montreal was frozen. In this video, I also speak with

Shawn Jason Laponte and Shaun Zimmer, another participant in the Freedom Convoy 2022 protest in Ottawa, about strategies we could employ to continue to distribute donated funds to truckers. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZ-MwVsF5R6/?utm_medium=copy_link.

- h. On February 14, 2022, I made another livestream video that is 35 minutes and 34 seconds in length. The video shows me distributing funds to truckers. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CZ-E-FCIm1w/?utm_medium=copy_link

- i. On February 16, 2022, I made a livestream video that is 44 minutes and 54 seconds in length. This video shows me documenting the site of the Freedom Convoy 2022 protests. As I was walking through the protest site, I was distributing funds to truckers that were given to Canadian Frontline Nurses for this purpose, but I was careful not to show or mention this in my livestream in light of the *Emergencies Measures Regulations* that were enacted on February 15, 2022. This video is accessible on my Instagram profile at the following URL:

https://www.instagram.com/tv/CaDEp5KKeTi/?utm_medium=copy_link

21. A hyperlink to a downloadable version of the videos referenced in paragraph 20 above is attached hereto and marked as Exhibit “D”.

22. Other individuals present at the Freedom Convoy 2022 protest in Ottawa were also taking and sharing photographs and video on social media. On February 14, 2022, an individual named Caryma Sa’d (Twitter handle @CarymaRules) posted a video and photographs of

showing me providing funds to a Freedom Convoy 2022 Ground Coordinator. I provided funds to the Ground Coordinator in order to assist with the distribution of funds and the obtaining of supplies to support the truckers who were participating in the Freedom Convoy 2022 protest in Ottawa. A screenshot Ms. Sa'd's February 14, 2022 posts which feature the aforementioned video and photographs is attached hereto and marked as Exhibit "E."

23. I continued to accept and distribute funds to truckers and continued to provide them with access to the amenities available at our room at the Sheraton on and after February 15, 2022.

24. On February 16, 2022, I was temporarily unable to access my online banking with the Royal Bank of Canada. I initially feared that this was as a result of the *Emergency Economic Measures Order*, but I later learned that Royal Bank of Canada was experiencing a temporary outage with their online banking services.

25. On February 16, 2022, the Ottawa Police Service distributed a "Notice to Demonstration Participants." It stated in part: "[t]he people of Ottawa are being denied the lawful use, enjoyment and operation of their property and you are causing businesses to close. That is mischief under the Criminal Code." The notice further stated that the "Federal Emergencies Act allows for the regulation or prohibition of travel to, from or within any specified area. This means that anyone coming to Ottawa for the purpose of joining the ongoing demonstration is breaking the law." A photograph of the Notice to Demonstration Participants that was distributed by the Ottawa Police Service on February 16, 2022 is attached hereto and marked as Exhibit "F".

Canadian Frontline Nurses and Me are “designated persons” under the *Emergency Economic Measures Order*

26. I have been advised by several peaceful participants in the Freedom Convoy 2022 protests who did not operate or park a truck in Ottawa that they had their bank accounts frozen after the *Emergencies Act* was invoked.

27. Tom Marazzo is one of the individuals who advised me that his financial accounts had been frozen.

28. I have reviewed the *Emergency Economic Measures Order* and the *Emergency Measures Regulations*.

29. I understand from my review of section 4 of the *Emergency Measures Regulation* that a person must not travel to or within an area where an assembly that may reasonably be expected to lead to a breach of the peace is taking place nor bring a minor within 500 metres where such an assembly is taken place, unless the exemptions set out in subsection 4(3) apply.

30. I travelled to, and brought a minor to, the Freedom Convoy Protest 2022 assembly in Ottawa on and after February 15, 2022. None of the exemptions set out in subsection 4(3) of the *Emergency Measures Regulation* apply to me.

31. I understand that section 5 of the *Emergency Measures Regulation* prohibit individuals from directly or indirectly using, collecting, providing, making available, or inviting a

person to provide property to facilitate or participate in an assembly that may reasonably be expected to lead to a breach of the peace or to benefit a person who is facilitating or participating in such an assembly.

32. Canadian Frontline Nurses collected funds to facilitate its and my participation in the Freedom Convoy 2022 assembly in Ottawa after February 15, 2022.

33. Canadian Frontline Nurses and I also collected funds, provided funds, made funds available, and invited others to provide funds to truckers to facilitate their participation in the Freedom Convoy 2022 assembly in Ottawa on and after February 15, 2022.

34. I understand from my review of section 1 of the *Emergency Economic Measures Order* that a “designated person” means any individual or entity that is engaged, directly or indirectly, in an activity prohibited by section 2 to 5 of the *Emergency Measures Regulations*. I further understand from my review of the balance of the *Emergency Economic Measures Order*, that this Order in effect prevents financial institutions from dealing in any property, including funds, or providing any financial or related services to a “designated person”.

35. I verily believe that I am a designated person under the *Emergency Economic Measures Order*. I verily believe Canadian Frontline Nurses is a designated person under the *Emergency Economic Measures Order*. I further verily believe that any individual who provided funds to me or Canadian Frontline Nurses on or after February 15, 2022 are designated persons.

36. Canadian Frontline Nurses has funds stored with financial institutions. Canadian Frontline Nurses needs access to funds stored at financial institutions to support its mission.

37. Canadian Frontline Nurses was also distributing donated funds to truckers who were participating in the peaceful assembly and expression of dissent in the Freedom Convoy 2022 Protest in Ottawa.

38. I, in my personal capacity, have money stored in financial institutions. I also have credit cards.

The Impact of the Invocation of the Emergencies Act and the Measures that passed in its wake on Canadian Frontline Nurses and Me.

39. Neither I nor any members of Canadian Frontline Nurses engaged in any criminal activity during our participation in Freedom Convoy 2022 protests in Ottawa. None of Canadian Frontline Nurses' members, including myself, charged with an offence under the *Emergency Measures Regulations* or the *Criminal Code*. However, the invocation *Emergencies Act* and the enactment of the *Emergency Measures Regulations* did leave me with the fear that I and other members of Canadian Frontline Nurses could be charged for our peaceful expression of dissent and financial support of others participating in the Freedom Convoy 2022 protests in Ottawa. This fear remains given many of the statements made by politicians and police that they will continue to investigate and charge people who have breached the provisions made pursuant to the *Emergencies Act*.

40. To my knowledge, neither my financial accounts nor the financial accounts of Canadian Frontline Nurses were frozen as a result of the Emergencies Measures Regulations. However, I was constantly in fear that my accounts and Canadian Frontline Nurses'

accounts could be frozen at any time. I do not believe this concern was irrational, in light of the federal government's messaging and the fact that I was aware that several fellow protestors' accounts were frozen for participating in the same activities as Canadian Frontline Nurses and I did.

41. After February 14, 2022, we were not able to distribute funds and support as openly as we had before, for fear that our accounts would be frozen or that we would be charged under the *Emergency Measures Regulations*.
42. The threat of our accounts being frozen caused me and Canadian Frontline Nurses to be more cautious in how we solicited and distributed support to truckers participating in the Freedom Convoy 2022 protests in Ottawa. After February 14, 2022, I was careful to no longer broadcast the donations we were making to truckers in my social media posts and live feeds. I verily believe that showing the distribution of funds in support of the truckers in our broadcasts were important to those who had donated to Canadian Frontline Nurses, as our donors who supported the objectives of the Freedom Convoy 2022 movement wanted to see that the funds they donated were being put to good use.
43. After February 14, 2022, I was advised by many Canadian Frontline Workers' supporters that they were hesitant to donate funds to Canadian Frontline Workers as they were concerned that their financial accounts would be frozen.
44. After February 14, 2022, the volume of donations to Canadian Frontline Nurses declined.

45. I observed that the number of participants in the Freedom Convoy 2022 protests in Ottawa dwindled after the *Emergencies Act* was invoked.
46. I verily believe as a result of conversations I had with other participants and supporters of the Freedom Convoy 2022 protest in Ottawa, that many were hesitant to continue to assemble and express their dissent after the *Emergencies Act* was invoked. These individuals expressed fear that their financial accounts could be frozen and that they could be prosecuted for supporting or participating in the Freedom Convoy 2022 protest in Ottawa.
47. Several parents advised me that they were concerned that their children could be taken away from them as a result of their support and participation in the Freedom Convoy 2022 protest in Ottawa.
48. Some truckers advised me that they were stopping their participation in the Freedom Convoy 2022 protest in Ottawa due to concerns that the insurance for their trucks would be cancelled as a result of the invocation of the *Emergencies Act*.
49. I am the mother of two minor children who I love very much. My children were present with me in Ottawa, and they had attended the Freedom Convoy 2022 assembly in Ottawa. However, on February 18, 2022 and February 19, 2022, I left my children at the hotel and did not bring them to the protest. I was aware that by bringing my children with me to the protest site in Ottawa I could be charged under the *Emergency Measures Regulations* which not only prohibits a person from participating in an assembly, but prohibited bringing a minor within 500 metres of an assembly that may reasonably be expected to lead to a breach

of the peace. While I did not believe that the assembly could be reasonably expected to lead to a breach of the peace (given that the protests I observed in Ottawa were peaceful) I was not confident that the authorities interpreting the *Emergency Measures Regulations* would not charge me, particularly in light of the rhetoric I had heard from various Ministers of the Federal Cabinet, the pamphlets that the Ottawa Police distributed on February 16, 2022, and notices that were posted at the Sheraton advising of the potential penalties that could be imposed for bringing children to the protest site.

50. I was concerned that by continuing to peacefully assemble and express my opinions, beliefs, and values in the Freedom Convoy 2022 protests in Ottawa after February 14, 2022, that not only my financial accounts were subject to be frozen, but that anyone who directly or indirectly supported me or Canadian Frontline Nurses could have their accounts frozen as well.

51. At present, I do not have a job that pays me an income and my husband is on an unpaid leave of absence from his work. Accordingly, my family and I need to rely on the funds I have stored at the bank and access to credit to support ourselves.

52. By February 19, 2022, I decided as a result of the chilling impact of the invocation of the *Emergencies Act* on the Freedom Convoy 2022 protest in Ottawa that Canadian Frontline Nurses and I would no longer participate in this protest.

53. On February 23, 2022, Canadian Frontline Nurses opened a separate account to segregate funds donated towards the legal fees associated with this Application from the funds Canadian Frontline Nurses receives for the community work it does in accordance with its

not-for-profit mission. Despite taking this step, several individuals advised me that they are reluctant to donate to our legal fundraising account out of fear that their own financial accounts could be frozen. Some of these concerns are reflected in the comments made in response to my February 23, 2022 post on the Canadian Frontline Nurses Facebook page. A printout of a screenshot of my February 23, 2022 post and the comments is attached hereto and marked as Exhibit "G".

Sworn before me remotely by Kristen Nagle, of London, Ontario before me in the City of Toronto, Ontario on March 4, 2022.



Alexander Boissonneau-Lehner
Commissioner for Taking Affidavits
(or as the case may be)

KRISTEN NAGLE

This is Exhibit "A" to the Affidavit of Kristen Nagle
sworn March 4, 2022

A handwritten signature in black ink, appearing to read 'ALEX', is written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Alexander Boissonneau-Lehner



Certificate of Incorporation

Canada Not-for-profit Corporations Act

Certificat de constitution

*Loi canadienne sur les organisations à but non
lucratif*

Canadian Frontline Nurses

Corporate name / Dénomination de l'organisation

1290156-1

Corporation number / Numéro de
l'organisation

I HEREBY CERTIFY that the above-named corporation, the articles of incorporation of which are attached, is incorporated under the *Canada Not-for-profit Corporations Act*.

JE CERTIFIE que l'organisation susmentionnée, dont les statuts constitutifs sont joints, est constituée en vertu de la *Loi canadienne sur les organisations à but non lucratif*.

Raymond Edwards

Director / Directeur

2021-04-06

Date of Incorporation (YYYY-MM-DD)
Date de constitution (AAAA-MM-JJ)



Form 4001
Articles of Incorporation
Canada Not-for-profit Corporations
Act (NFP Act)

Formulaire 4001
Statuts constitutifs
Loi canadienne sur les
organisations à but non lucratif
(Loi BNL)

1	Corporate name Dénomination de l'organisation Canadian Frontline Nurses
2	The province or territory in Canada where the registered office is situated La province ou le territoire au Canada où est maintenu le siège ON
3	Minimum and maximum number of directors Nombres minimal et maximal d'administrateurs Min. 1 Max. 10
4	Statement of the purpose of the corporation Déclaration d'intention de l'organisation To unite nurses across Canada and bring the ethics back into healthcare.
5	Restrictions on the activities that the corporation may carry on, if any Limites imposées aux activités de l'organisation, le cas échéant None
6	The classes, or regional or other groups, of members that the corporation is authorized to establish Les catégories, groupes régionaux ou autres groupes de membres que l'organisation est autorisée à établir See attached schedule / Voir l'annexe ci-jointe
7	Statement regarding the distribution of property remaining on liquidation Déclaration relative à la répartition du reliquat des biens lors de la liquidation See attached schedule / Voir l'annexe ci-jointe
8	Additional provisions, if any Dispositions supplémentaires, le cas échéant None
9	Declaration: I hereby certify that I am an incorporator of the corporation. Déclaration : J'atteste que je suis un fondateur de l'organisation.

Name(s) - Nom(s)

Original Signed by - Original signé par

Kristen Marie Nagle

Kristen Marie Nagle

Kristen Marie Nagle

Sarah Anahid Choujounian

Sarah Anahid Choujounian

Sarah Anahid Choujounian

A person who makes, or assists in making, a false or misleading statement is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000 or to imprisonment for a term of not more than six months or to both (subsection 262(2) of the NFP Act).

La personne qui fait une déclaration fausse ou trompeuse, ou qui aide une personne à faire une telle déclaration, commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de 5 000 \$ et un emprisonnement maximal de six mois ou l'une de ces peines (paragraphe 262(2) de la Loi BNL).

You are providing information required by the NFP Act. Note that both the NFP Act and the *Privacy Act* allow this information to be disclosed to the public. It will be stored in personal information bank number IC/PPU-049.

Vous fournissez des renseignements exigés par la Loi BNL. Il est à noter que la Loi BNL et la *Loi sur les renseignements personnels* permettent que de tels renseignements soient divulgués au public. Ils seront stockés dans la banque de renseignements personnels numéro IC/PPU-049.

Schedule / Annexe
Classes of Members / Catégories de membres

The corporation is authorized to establish Class A members and Class B members as follows:

- (1) The Class A members shall be entitled to receive notice of and to attend all meetings of the members of the Corporation and each Class A member shall have one (1) vote at each such meeting, except for meetings at which only members of another class are entitled to vote separately as a class.
- (2) Except as otherwise provided by the Canada Not-for-Profit Corporations Act, S.C. 2009, c.23 the Class B members shall not be entitled to receive notice of, attend or vote at meetings of the members of the Corporation.

Schedule / Annexe**Distribution of Property on Liquidation / Répartition du reliquat des biens lors de la liquidation**

Any property remaining on liquidation of the Corporation, after discharge of liabilities, shall be distributed to one or more qualified donees within the meaning of subsection 248(1) of the Income Tax Act.

This is Exhibit "B" to the Affidavit of Kristen Nagle
sworn March 4, 2022

A handwritten signature in black ink, appearing to read 'A. Boissonneau-Lehner', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Alexander Boissonneau-Lehner



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CEASE & DESIST LETTER TO OTTAWA POLICE

Justice Centre
 for Constitutional Freedoms

CLICK HERE

TODAY'S LINEUP

PARTICIPATING GROUPS


Adopt-a-Trucker
**FAMILIES
FOR
CHOICE**

**CANADIAN FRONTLINE
NURSES**

C.L.E.A.R.
Common Law Education and Rights

**POLICE ON GUARD
FOR THEE
WILL YOU STAND?**

Mama Bears
 It's okay to wait


Citizens for Unity



FREEDOM CONVOY CANADA

LEAVE A COMMENT

Jan 28, 2022 | 1,955 Comments

BOTTOM / LAST COMMENTLeave a comment. Trolling gets your IP address banned. Once your first comment is approved, all your next comments will be automatically approved going forward.TO THE TROLLS, WE HAVE ACTUALLY BEEN GATHERING INFORMATION ON ALL OF YOU AND YOUR IP...

Chris on [LEAVE A COMMENT](#): "I've heard that Pat, George, Tamara and Chris have been arrested and cannot post bail due to accounts being frozen!..."

Feb 20, 07:27

Greg MacDonald on [LEAVE A COMMENT](#): "Words can't express the gratitude felt. I went to Ottawa and now constructively emailing our MPs, MPPs, the Senate. We..."

Feb 20, 06:57

Catherine Nina on [LEAVE A COMMENT](#): "You don't know how much you make me feel alive since you begin this Convoy ! I followed your press..."

Feb 20, 06:35

Randy Bugera on [LEAVE A COMMENT](#): "Thank you for standing up for our freedom"

Feb 20, 06:19

BOB TOMPSON on [LEAVE A COMMENT](#): "Jagmeet Singh told parliament today the Freedom Truckers website says the goal is to overthrow the government.. I say show..."

Feb 20, 00:48

Karen Wood on [LEAVE A COMMENT](#): "Thank you for drawing a line in the sand and standing up for our freedom. Praying for you all."

FREEDOM CONVOY SONGS

Feb 19, 21:05

Jeff on [LEAVE A COMMENT](#): "THE CITIZENS OF USA STANDS WITH YOU!!"

Feb 19, 20:56

Mark on [LEAVE A COMMENT](#): "As too why there isn't any (COVID) cases. That would be because it's as harmful as a gnat. But that..."

Feb 19, 20:56

Manon on [LEAVE A COMMENT](#): "Thanks to you the fringe is way thicker than "one" wants to believe. Thick enough that "one" has to resort..."

Feb 19, 19:17

Melissa on [LEAVE A COMMENT](#): "Thank you so much for fighting for us. There are no words that can explain my gratitude. You are hero's..."

Feb 19, 19:15

Tara on [LEAVE A COMMENT](#): "So many people and not one word on anyone having to go to the hospital with covid or even having..."

Feb 19, 17:16

Darryl Stinson on [LEAVE A COMMENT](#): "Thank u so much for fighting for us. Brings tears to my eyes all the pictures and smiles. Especially the..."

Feb 19, 16:19

Dan on [LEAVE A COMMENT](#): "Our truckers and citizens are peacefully demonstrating at Québec City Parliament Hill. Lot of love and Joy and snow! Keep..."

Feb 19, 14:27

Candace on [LEAVE A COMMENT](#): "Just wondering who can I contact about coming up from Toronto. If there's a freedom bus. Please email me at..."

Feb 19, 14:20

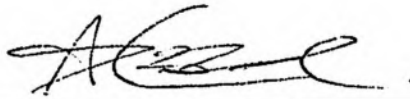
Vee Ballon on [LEAVE A COMMENT](#): "SHAME SHAME on the police ...I am in tears watching what is going on .Respect to all of you out..."

Feb 19, 12:45

[READ MORE](#)



This is Exhibit "C" to the Affidavit of Kristen Nagle
sworn March 4, 2022

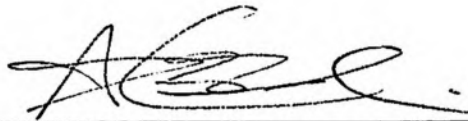
A handwritten signature in black ink, appearing to read 'A. Boissonneau-Lehner', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Alexander Boissonneau-Lehner

Exhibit C - <https://johnstonecowling-my.sharepoint.com/:f:/p/alehner/En4e3Ce4xbNHhG5K5VHmXP4B5U7lIOzupKiOtD-wxS2-zQ?e=2dNeEl>

This is Exhibit "D" to the Affidavit of Kristen Nagle
sworn March 4, 2022

A handwritten signature in black ink, appearing to read 'ALE', is positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Alexander Boissonneau-Lehner

Exhibit D - <https://johnstonecowling-my.sharepoint.com/:f:/p/alehner/EiTqhtMjg4tNpcFAclzNwUwBnysnpMtkKCjhwdwcoxRS4g?e=LncB08>

This is Exhibit "E" to the Affidavit of Kristen Nagle
sworn March 4, 2022

A handwritten signature in black ink, appearing to read 'ALEX', written over a horizontal line.

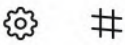
Commissioner for Taking Affidavits (or as may be)

Alexander Boissonneau-Lehner



← Thread

000138



Caryma Sa'd - Lawyer + Political Satirist @CarymaRules · Feb 14
It looks like there's a couple of hundred dollars in this envelope being delivered to a "ground coordinator" from a woman in a Canadian Frontline Nurses toque.

[#cdnpoli](#) [#FreedomConvoy](#) [#Ottawa](#)



🔄 42

↺ 142

👍 221



Caryma Sa'd - Lawyer + Political Satirist
@CarymaRules

I don't know who either of these people are in relation to the convoy/occupation.



2:50 PM · Feb 14, 2022 · Twitter for iPhone

26 Retweets 2 Quote Tweets 87 Likes



Caryma Sa'd - Lawyer + Political Satirist @CarymaRules · Feb 14
Replying to @CarymaRules
Follow the money.

[#cdnpoli](#) [#FreedomConvoy](#) [#Ottawa](#)

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Russia escalates attack on Ukrainian cities
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Toront... · This morning
Deputy premier
Christine Elliott will not
seek re-election



The New ... · Last night
Why unloading Russian
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11 36 118



Howard McGregor @rhmac_howard · Feb 14

Replying to @CarymaRules
Change back for services rendered?

2 2

[Show replies](#)



Erin @erin_splinters · Feb 14

Replying to @CarymaRules
Ironically, their website references the "injustice of abortion" ffs.

3



brian @briansendtweet · Feb 14

Replying to @CarymaRules
Kristen Nagle possibly? She was seen 4 days ago wearing that same toque/coat

3 10



Anny @annyeleni · Feb 14

Yup it's her

1 2

[Show replies](#)



Hope Barrett 🍷 @AuthorwAttitude · Feb 14

Replying to @CarymaRules
Man, I was hoping this was going to be a story about a good daughter giving her father some money but then I googled Canadian Frontline Nurses 😞

2



Todd Goldsbie @toddfg · Feb 14

Replying to @CarymaRules
Professional gifters at work. Nothing to see here.

1



dee gaud @gaudall · Feb 14

Replying to @CarymaRules
I believe the woman is Kristen Nagle. An anti masker and anti vaxxer

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MAUREEN H.

· @MaureenG57 · Feb 14



Yes, an RN who's license is under review, from London Ont.

3

5

44



[Show replies](#)



Abby @abbythetweet · Feb 14

Replying to @CarymaRules

That is Kristen Nagle, who's face is on the CFN website. Real fascinating exchange of funds in support of continued occupation, even though CFN says they just care about natural immunity before vaccines...



Kristen

Registered Nurse, BScN, RHN

1



4



Neli Trevisan @neli_trevisan · Feb 14

Replying to @CarymaRules

Canada First is a fringe group of unlicensed former nurses who have been disciplined and had their registration revoked by their college. This woman is one of their spokespersons.

1



3



Jeremy McCall @jmccall54 · Feb 14

Replying to @CarymaRules

She's the same person recently screaming at CBC about how their "lies" cost her and her husband (a teacher) their jobs. But she's able to wander around and handle packets of cash out to protestors. Interesting.

1



6



Miztwocents13 @miztwocents13 · Feb 19

Wearing a Nurses toque as well

1



1



Samantha Smith @Samanthablab · Feb 14

Replying to @CarymaRules

I know exactly who that is

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**Seeds in Putin's Pocket** 🌻 @CoinBitty · Feb 15

Replying to @CarymaRules

FrontLine Nurses are against the vaccine mandate.

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@CarymaRules

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This is Exhibit "F" to the Affidavit of Kristen Nagle
sworn March 4, 2022

A handwritten signature in black ink, appearing to read 'A. Boissonneau-Lehner', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Alexander Boissonneau-Lehner

OTTAWA POLICE SERVICE

NOTICE TO DEMONSTRATION PARTICIPANTS

You must leave the area now. Anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and you may be arrested. You must immediately cease further unlawful activity or you will face charges. If you are arrested you may be released on bail depending on factors contained in Part XVI of the Criminal Code.

The people of Ottawa are being denied the lawful use, enjoyment and operation of their property and you are causing businesses to close. That is mischief under the Criminal Code.

Charges and/or convictions related to unlawful activity associated with the demonstration may lead to denial in crossing the USA border.

The Federal Emergencies Act allows for the regulation or prohibition of travel to, from or within any specified area. This means that anyone coming to Ottawa for the purpose of joining the ongoing demonstration is breaking the law. The act also provides police with a number of measures including the ability to seize vehicles that are part of this demonstration.

Ontario law (EMCPA) now prohibits interference with any critical infrastructure including 400-series highways, railways, airports and international border crossings. It prohibits you from preventing someone from travelling to or from walkways, bridges and highways (other than 400 series highways) or preventing anyone from using them. It also prohibits someone from seriously interfering with the safety, health or well-being of members of the public.

Anyone who commits these illegal actions could face fines or be required to appear in court. Commercial vehicle drivers' licences and private drivers' licences can be suspended or revoked.



This is Exhibit "G" to the Affidavit of Kristen Nagle
sworn March 4, 2022

A handwritten signature in black ink, appearing to read 'ALEX', is positioned above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

Alexander Boissonneau-Lehner

**Canadian Frontline Nurses**

February 23 at 5:28 PM · 🌐

...

Canadian Frontline Nurses 🇨🇦 are going to Federal Court Friday 25th of February at 10am to challenge the government's use of the Emergency Act.

Contributions towards Canadian Frontline Nurses' legal costs for application against the Canadian government's misuse of the Emergency Act are greatly appreciated

If interested, please send an etransfer at CFLNLEGALFEES@PROTONMAIL.COM...
See more

**Canadian Frontline Nurses
Are going to federal court
Friday 25th 10am
To challenge the governments
use of the emergency act.**



469

52 Comments 82 Shares

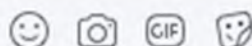
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Comment

Share

Most relevant ▼

Write a comment...



George Choboter

I dont see why you can't use GIVESENDGO...they can't freeze that...you are asking to support fir court action..not occupation like they govt try to use to steal funds.

Like Reply 1w Edited



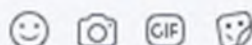
Valerie Chappel

George Choboter they seem to be doing whatever they want regardless of the law and validity of it. Justin Castro is unreal as is anyone on his same trajectory.

Like Reply 1w



Reply to George Choboter...



Cathy Sutton

I've heard they've been confiscating all the money and freezing peoples bank accounts that do donate

Like Reply 1w



Author

Canadian Frontline Nurses

Cathy Sutton that was for the convoy

Like Reply 1w



Concetta D'Ottavio Di Bernardo

Are you able to safeguard your donations from the system?

Like Reply 1w Edited



Author

Canadian Frontline Nurses

Concetta D'Ottavio Di Bernardo they can't touch donations for

legal fees...but then again, I guess anything is possible these days 😞 000148

Like Reply 1w



Marie DeMasi

Much Love and Support from America 🇺🇸 ❤️ 🇨🇦 GOD BLESS YOU ❤️ 🇺🇸 🇨🇦

Like Reply 1w



Pina Crupi

PIERRE TRUDEAU former Liberal Prime Minister known to support socialist/communists interests implemented the Charter in 1982 which allows government to erode our rights and freedom. The communist states that we have seen established in other countries ... **See more**

Like Reply 1w



Cori McCaw

So what now that the E Act has been revoked? The mandates are still in place and must be revoked as well! All of this needs to end now!

Like Reply 1w



Karin Bohusova

Thank you Kristen. I wish you were using the Bill of Rights. But unfortunately the lawyers are "emotionally" attached to the Charter. The Charter is very similar to what we had in my country of origin - socialistic Czechoslovakia. We had constitution w... **See more**

Like Reply 1w



↳ 3 Replies



Melanie Levac

We are sitting in the middle of a field, watching attentively how to proceed. So please do keep us updated.. we'll follow suit 🇺🇸 🇨🇦 ❤️ 🇺🇸

Like Reply 4d



Amy Lynn

Could you send me the newsletter!! RN here.. facing probable termination

Like Reply 1w



↳ 1 Reply

**Valerie Chappel**

Thank God for you and the Truckers and protestors! ❤️🙏

Like Reply 1w

**Michael Collins**

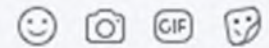
Frontline Nurses Rule! 🙏❤️ 4

Like Reply 1w

Most Relevant is selected, so some replies may have been filtered out.



Reply to Michael Collins...

**Brenda Pearce**

Those measures have apparently been dropped now. Does that drop the case now? Just asking if that affects it now.

Like Reply 1w

**Mary Therese**

Awesome nurses!! Praying you defeat tyranny. Love & support from Australia



Like Reply 1w

**Peggy Larson**

Stop!!! Don't use the charter!!!!

Like Reply 1w

**Adam White**

The Emergency Act application was withdrawn. Has the premise to suing changed?

Like Reply 1w Edited

**Colleen Raine Chretien**

Like Reply 1w

**Allan Wooden**

As much as I want to help you. Im doing all I can to remove Biden!

Like Reply 1w

**Rose Elia**

Like Reply 6d

000150



Kris Marion



Like Reply 1w



Madeline Audrey Bruce

Bravo. I am proud of you my sisters - Retired RPN.



Like Reply 1w



Author

Canadian Frontline Nurses

Madeline Audrey Bruce please send us your email if interested to receive our newsletter and what we are up to

Like Reply 1w



Madeline Audrey Bruce

Canadian Frontline Nurses oldcity@shaw.ca

Like Reply 6d

Most Relevant is selected, so some replies may have been filtered out.



Marygrace Coneff

How do you donate via email?

Like Reply 1w



Elicia Koehn

Yay!! Sending all the love and light your way ❤️❤️🥰🥰

Like Reply 1w



Mike Delarmee

OMG I was totally right about you being an anti- Democratic pro treasonous right wing group after I saw that you attended the most weight ring news organization in America "OAN"..

Like Reply 1w

↪ 1 Reply

Most Relevant is selected, so some comments may have been filtered out.

Write a comment...

Court File No.: T-382-22

FEDERAL COURT**BETWEEN:****JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD RISTAU****Applicants****- and -****GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, ATTORNEY
GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS****Respondents****APPLICATION UNDER Sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and
Rules 301 of the *Federal Courts Rules*.****AFFIDAVIT OF HAROLD RISTAU****I, HAROLD RISTAU, a reverend and associate professor at Concordia Lutheran
Theological Seminary, of Fort Erie, in the Province of Ontario, SWEAR THAT:****Background**

1. I am one of the named Applicants herein, and as such I have personal knowledge of the facts and matters herein deposed to except where based on information and belief in which case, I believe the same to be verily true.
2. I am 50 years old.
3. I have a Bachelor of Arts in Political Science and Economics (1995) degree and Master of Arts in Political Science (1996) degree both from the University of Waterloo.
4. I have a Master of Divinity (2000) degree from Concordia Lutheran Theological Seminary and Brock University.
5. I have a Doctor of Philosophy (PhD) in Religious Studies (2006) from McGill University.

Bv/ab R 1

6. I have served as a chaplain with the Canadian Armed Forces with tours of duty in Afghanistan and Iraq. Attached and marked hereto to this Affidavit as **Exhibit "A"** is a photograph of myself in my military attire.
7. I am also a retired officer in the Canadian Special Operations Forces Command ("**CANSOFCOM**").

Involvement with the "Freedom Convoy"

8. My personal involvement with the so called "Freedom Convoy" was and has been limited.
9. I do support the Freedom Convoy as it pertains to what I believe has been consistent and ongoing violations of mine and others civil and constitutional rights.
10. I attended the Freedom Convoy protests in Ottawa for a single day on February 12, 2022 (the "**Protests**") as I wanted to express my constitutional rights to oppose policies of the federal government.
11. My own observations of the Protests are that it was a patriotic environment that was kind to families. It was festive, diverse, loving, and most importantly it was peaceful.
12. The only blockades that I witnessed at the Protests were police blockades that contained concrete barricades and police cars at various locations in Ottawa.
13. One of the proudest moments I have had as a Canadian was on February 12, 2022, during my attendance at the Protests. It gave me a sense of hope and optimism sharing a beautiful unifying moment with my fellow Canadian citizens.
14. I was personally present when military veterans and other citizens disassembled the fence surrounding the National War Memorial and Tomb of the Unknown Soldier

Bvlab R 2

(collectively, the "War Memorial").

15. The removal of the fence surrounding the War Memorial was done in a peaceful, orderly, and respectful manner. It was a unifying and patriotic moment that involved psychological, spiritual, and emotional healing.
16. It is my belief that the fences around the War Memorial were meant to shame, humiliate, and dehumanize those in attendance at the Protests.
17. The War Memorial holds special significance for me both as a man of the cloth and as a military veteran as I consider it to be a sacred and holy place.
18. I was the chaplain who conducted and led the prayers at the War Memorial which made national news on CTV and other news outlets in Canada (the "Prayers").
19. Before the Prayers began, several veterans shovelled snow and laid beds of flowers around the War Memorial.
20. I was eventually led up the steps of the War Memorial that were shoveled by the patriotic veterans. At one point, a veteran called out something along the lines of, "steady up, padre is going to pray. Hats off.". I was moved to tears in that moment as I saw before me thousands of people bowing their heads.
21. The Prayers that I led were Christian prayers, but they were inclusive to all in attendance. I conducted the Lord's Prayer and gave a benediction from the Old Testament that Jews, Muslims, and Christians honour.
22. The Prayers also contained asking the Lord for the non-violence of the Protests to remain non-violent, for peace, that our government turn away from corruption and receive mercy, and most of all that our hearts be filled with love for those who do wrong.

Bv/aB R

23. It is my belief that the Prayers that I conducted were of a religious nature and carried religious significance akin to a Remembrance Day service.
24. A Remembrance Day service is a religious right embedded in a state and church overlap that happens yearly at the War Memorial. The religious right embedded can be a multi faith service just as it was when I led the Prayers.
25. I am veteran and a chaplain, other veterans asked me to lead the Prayers. Even though I am retired, I believe it is my solemn duty to continue to serve CAF members, and especially as a Legion member, in any way I can. This included my solemn duty and oath to perform a service and the Prayers for them upon their request.
26. The Prayers were followed by the singing of O Canada along with several hugs, tears, and interviews with various media in attendance.
27. I cannot overstate how beautiful this moment was for myself and those in attendance.

Emergencies Act

28. It is my understanding and belief that sometime on or around February 14, 2022, the Federal Government invoked the *Emergencies Act*, RSC, 1985, c. 22 (4th Supp.) (the "*Emergencies Act*") in response to the Protests.
29. I have been directly and substantially harmed by the *Emergencies Act* for my attendance at the Protests and for the Prayers I made at the War Memorial.
30. Since the *Emergencies Act* was invoked, I have had brothers refuse communion with me in my seminary for the first time in my life, and I have had my life threatened along with staff at my place of employment receiving threats.
31. On February 16, 2022, I received a phone call and voicemail from a veteran from one

Bv/dB R 4

of the CANSOFCOM units (the "PTSD Veteran") saying he would hurt me unless I answered the next phone call (the "Threat").

32. I have saved the voicemail message and contacted the local police to file a report about the Threat (the "Police Report").
33. When I next spoke to the PTSD Veteran on February 16, 2022, he accused me of desecrating the War Memorial, insurrectionism, being a supporter of Nazism and other false accusations. The police were on the line during this phone call.
34. I was able to de-escalate the situation with the PTSD Veteran and we ended up praying together even though I believe I may have been breaking a confessional seal already by having the police listen to a spiritual conversation.
35. Despite filing a report, I asked the police not to charge the PTSD Veteran as I was able to successfully de-escalate the situation.
36. The PTSD Veteran also had harassed my secretary resulting in a meeting being held with the Board of Directors at my seminary as to whether our staff were safe.
37. It is my belief that the PTSD Veteran was emboldened by the *Emergencies Act* declaration, which I believe labelled anyone who supported the Protests as an enemy of the state and an insurrectionist.
38. I am not an enemy of the state or an insurrectionist.
39. On February 17, 2022, my boss told me that we needed to talk immediately and later told me in person that I cannot support the Freedom Convoy anymore. I believe that this conversation would not have happened if the *Emergencies Act* declaration had not occurred.

Bv/dB R 5

40. I have now been required to put a disclaimer on all correspondences I have from my seminary and personal email accounts (the "Disclaimer").
41. The Disclaimer that I am now required to use requires me to state that my political and moral views do not reflect the religious community for which I belong to.
42. I have suffered further isolation and suspicion amongst my religious community which I believe to be the direct result of my support of the Protests.
43. I still do not understand what I have done wrong. I am being threatened, intimidated, guilted, shamed, shunned, and ostracized within my religious community in a way that would not be occurring but for the *Emergencies Act* being invoked.
44. It is my belief that my freedom of religion and worship at the War Memorial has been impaired and I am not sure if I will be arrested if I go to the War Memorial. My wife donated on "gofundme.com" to the Freedom Convoy and I approved of it. I am not sure if I have broken some law by doing so. We have since emptied our bank account out of fear that it would be frozen.
45. I do not know if I will ever be comfortable praying at the War Memorial again as it is my belief that the government will be going after anyone who supported the Freedom Convoy.
46. My reputation and integrity have been diminished. On February 12, 2022, I was a military veteran and a man of cloth leading the Prayers, and after February 14, 2022, I was labelled an insurrectionist and an enemy, yet I still do not know if I broke any laws.
47. It is my hope by providing the Federal Court with this affidavit that I will be able to have my name cleared, my standing in my religious community repaired, and my religious freedoms restored.

Bvd/B 6

48. I make this affidavit in support of an application under sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and Rule 301 of the *Federal Courts Rules* and for no improper purpose.

Sworn before me in the City of Calgary in the Province of Alberta on

March 9th 2022

Bath-Sheba Van Den Berg
Commissioner for Taking Affidavits
(or as the case may be)

BATH-SHÉBA VAN DEN BERG
Student-at-Law
Notary Public
A Commissioner for Oaths
In and for the Province of Alberta

[Signature]
(Signature of Deponent)

HAROLD RISTAU

Bv/dB R₇

Index

Description of Exhibits	Exhibit #
Photo of Rev Ristau in uniform	A

Bu/AB R



This is Exhibit "A" referred to in the
Affidavit of Harold Ristow
sworn (or affirmed) before me at
Calgary, AB
this 9 day of March 2022
Bath-Shéba van den Berg
A Commissioner for Oaths In and for the Province of Alberta

BATH-SHÉBA VAN DEN BERG
Student-at-Law
Notary Public
A Commissioner for Oaths
In and for the Province of Alberta

Bv/AB R

Court File No.: T-382-22

FEDERAL COURT

B E T W E E N :

JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD RISTAU

Applicants

- and -

GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, and ATTORNEY
GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

Respondents

APPLICATION UNDER Sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and
Rules 301 of the *Federal Courts Rules*.

I, BATH-SHEBA VAN DEN BERG, of the City of Calgary, in the Province of Alberta,
CERTIFY:

1. That I am a Commissioner of Oaths in and for Alberta, and I am satisfied that the process under NPP#2020-02 and the Federal Court Practice Direction (COVID-19): Update #7 (January 18, 2021) paragraphs 19 and 20 was necessary to swear the Affidavit of Harold Ristau, Applicant, in the herein proceedings on March 9th, 2022, because it was impossible or unsafe, for reasons of provincial border lockdowns, location, and health, for Harold Ristau, Applicant, and myself to be physically present together.
2. The two copies of the Affidavits are attached hereto as required by paragraph 8 of the NPP#2020-02.

Dated on March 9th, 2022, at Calgary, Alberta.



BATH-SHEBA VAN DEN BERG

Court File No.: T-382-22

FEDERAL COURT

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BV/AB

6. I have served as a chaplain with the Canadian Armed Forces with tours of duty in Afghanistan and Iraq. Attached and marked hereto to this Affidavit as **Exhibit "A"** is a photograph of myself in my military attire.
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8. My personal involvement with the so called "Freedom Convoy" was and has been limited.
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Bv/aB

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Bulat

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By: AB

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By/as

48. I make this affidavit in support of an application under sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and Rule 301 of the *Federal Courts Rules* and for no improper purpose.

Sworn before me in the City of Calgary in the Province of Alberta on

March 9th 2022

Commissioner for Taking Affidavits
(or as the case may be)

(Signature of Deponent)

Bv/ALB

Index

Description of Exhibits	Exhibit #
Photo of Rev Ristau in uniform	A

Bu/aB



This is Exhibit "A" referred to in the
Affidavit of Harold Airstaw
sworn (or affirmed) before me at
Calgary, AB
this 9 day of March 2022

A Commissioner for Oaths in and for the Province of Alberta

B. J. A. B.

Court File No.:

FEDERAL COURT

BETWEEN:

JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCY, and HAROLD RISTAU

Applicants

- and -

GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, and ATTORNEY
GENERAL OF CANADA

Respondents

APPLICATION UNDER Sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and
Rules 301 of the *Federal Courts Rules*.**AFFIDAVIT OF EDWARD CORNELL**I, EDWARD CORNELL, a retired member of the Canadian Armed Forces of the
Town of Shediac Cape, in the Province of New Brunswick, SWEAR THAT:**Background**

1. I am one of the named Applicants herein, and as such I have personal knowledge of the facts and matters herein deposed to except where based on information and belief in which case I believe the same to be verily true.
2. I am 64 years old.
3. I am a retired member of the Canadian Armed Forces where I achieved the rank of Warrant Officer.
4. On January 18, 2016, I changed my last name from the name of my adopted parents, Stewart, to the last name of my biological father, Cornell (the "**Name Change**"). Attached and marked hereto as **Exhibit "A"** to this Affidavit is a copy of the certificate of the Name Change.

5. On June 15th, 1987, I received a Medal of Bravery awarded by the Secretary to the Governor General for recognition of an act of bravery in hazardous circumstances during active duty in Limassol, Cyprus (the "**Medal of Bravery**"). Attached and marked hereto as **Exhibit "B"** to this Affidavit is a copy of the Medal of Bravery.
6. I further served as an auxiliary police officer with the Ontario Provincial Police from 2013 to 2015.

Involvement with the "Freedom Convoy"

7. I had very limited involvement with the so called "Freedom Convoy" initially.
8. On January 23, 2022, my wife and I decided to go to Ottawa to join the protests after we saw the Freedom Convoy travel through Moncton, New Brunswick on its way to Ottawa.
9. On January 29, 2022, I arrived in Ottawa to support the truckers involved in the Freedom Convoy (the "**Protests**") and I wore my military medals (the "**Military Medals**") when I attended the Protests. Attached and marked hereto as **Exhibit "C"** to this Affidavit is a picture of the Military Medals.
10. On January 31, 2022, I returned home with my wife from Ottawa.
11. On February 2, 2022, I arrived back in Ottawa alone to support the Freedom Convoy protestors, and I again wore my Military Medals throughout my attendance at the Protests.
12. I remained in Ottawa until February 21, 2022.
13. My intentions in returning to Ottawa was to support the Protests. I had, and still have, zero beliefs or intentions about overthrowing the elected government of Canada. I

believe in democracy and elected governments. My military record supports my belief in standing up for democracy and democratic rights all over the world.

14. My own observations of the Protests are that they were entirely peaceful. I did not witness any hostility from anyone towards anyone. Likewise, there were people of all different backgrounds, races, and ethnicities present. The mood throughout was festive and friendly.
15. Eventually, my role morphed into a position where I was asked to help participate in a liaison type of role between the police and the protestors. It is my belief that this was because both the police and protestors trusted me when they saw my Military Medals. It is my further belief that I presented as a trust worthy person.
16. Throughout my time at the Protests, hugs and handshakes with both police officers and protestors were commonplace.
17. I personally spoke with numerous members of the police who were present at the Protests. Several members of the police who observed me with my Military Medals on told me that they supported what the protestors were there for.
18. It is my opinion and belief that my role in the Protests was peaceful and the atmosphere was one of solidarity amongst my fellow Canadian citizens.

Emergencies Act and Frozen Bank Account

19. It is my understanding and belief that sometime on or around February 14, 2022, the Federal Government invoked the *Emergencies Act*, RSC, 1985, c. 22 (4th Supp.) (the "***Emergencies Act***") in response to the Protests.
20. I have been directly and substantially harmed by the *Emergencies Act* for my

involvement in the Protests.

21. On Friday, February 18, 2022, I attempted to sign into my Scotia Bank account because I had a couple of bills that I needed to pay. When I attempted to sign in and pay these aforementioned bills, I received an error message along the lines of "oops, we're sorry give us a call" (the "**Error Message**") with a redirect page containing a phone number to contact. Unfortunately, I did not save a screenshot of the Error Message at the time as I did not think much of it at the time.
22. Later on during the evening of Friday, February 18, 2022, my credit cards on Apple Pay came up as being blocked (the "**Blocked Credit Cards**").
23. I was unable to pay any of my bills through Apple Pay and the Blocked Credit Cards made me concerned that my bank accounts and credit cards had possibly been seized.
24. The following morning, on Saturday, February 19, 2022, I called the number provided in the Error Message as I was still suspicious about the Blocked Credit Cards. The experience was quite strange as I went through the options provided for on the phone before finally speaking with a banking agent (the "**Agent**"). The Agent appeared very flustered to me, and I was continually put on hold.
25. Eventually, the Agent directed me to a subsequent page on the banking portal. This subsequent page was perplexing to me as it directed me to contact the President of Scotia Bank (the "**Scotia Bank Complaints Page**"). Attached and marked hereto as **Exhibit "D"** to this Affidavit is a copy of the Scotia Bank Complaints Page.
26. I was unable to use my debit card or my credit cards from the evening of February 18th, 2022 until February 22, 2022 (the "**Seized Bank Accounts**").
27. Unable to use the Seized Bank Accounts, I was left in a very desperate situation and unable to pay any of my bills that were due during this time.
28. I thankfully had enough cash with me to return to New Brunswick from Ottawa.

However, I was required to go around the Highway 30 bridge because the tolls required payment via debit or credit card which I was unable to do. All of my cards connected to the Seized Bank Accounts were completely deactivated.

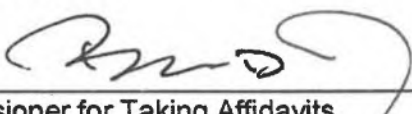
Irreparable Harm and Lasting Effects

29. My experience with the Seized Bank Accounts has been traumatic and has had a real and substantially negative psychological impact on me.
30. The Seized Bank Accounts and my experiences from this has left me completely terrified and scarred. I broke no law yet the government seized my accounts and froze my hard earned money.
31. I am not a criminal.
32. I am not a terrorist.
33. I am a retired Canadian citizen who honourably served his country. As a military veteran who already had previously been diagnosed with Post Traumatic Stress Disorder due to my experiences in the military, I am now concerned about the mental health effects this is having on me.
34. I am scared and concerned that the federal government will at any moment burst into my house in the middle of the night and take my possessions from me.
35. My wife and I are both very afraid and unable to sleep at night. I feel betrayed, I have always stood up for my country and I have no criminal record. I try to do the right things in my life.
36. I have never felt anything like this in my entire life, and this includes during my active military service.
37. I do not know how I can remain in Canada any longer. I feel as though I am being

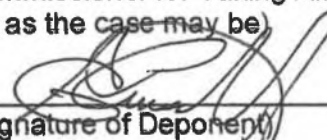
painted as some type of terrorist or something which I am absolutely not. I love Canada and the people in this country, and I am devastated by how I have been treated by my own government.

38. I make this affidavit in support of an application under sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and Rule 301 of the *Federal Courts Rules* and for no improper purpose.

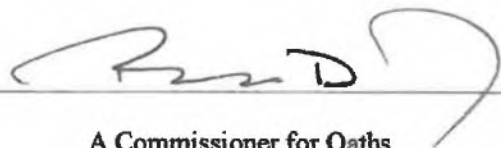
Sworn before me in the City of Shediac in the Province of New Brunswick on February 23, 2022


 Commissioner for Taking Affidavits
 (or as the case may be)

BRIAN D. HARKNETT
 Commissioner of Oaths
 My Commission Expires
 31st December 2022


 (Signature of Deponent)

This is **Exhibit A** to the Affidavit of **Edward Cornell**
sworn before me at the City of Stella Cove in the
Province of N.B., this 23 day of February, 2022.



A Commissioner for Oaths
in and for New Brunswick

BRIAN D. HARKNETT
Commissioner of Oaths
My Commission Expires
31st December 2028

Ontario CANADA

CHANGE OF NAME CHANGEMENT DE NOM



Form 25A - Formule 25A
Vital Statistics Act - Loi sur l'état civil

C0295687

Birthplace / Lieu de naissance

OLD/VIEUX: STEWART, EDWARD GLENN

NEW/NOUVEAU: CORNELL, EDWARD GLENN

ONTARIO

*Feb 23, 2022
certified this document
to be a true copy of
the original*

BRIAN D. HARKNETT
Commissioner of Oaths
My Commission Expires
31st December 2028

Date of registration - Date d'enregistrement

JANUARY 18, 2016

Registration number - Numéro d'enregistrement

2016-05-001318



Alexandra Schmidt
(Deputy Registrar General)
(Registraire général adjoint de l'état civil)

CERTIFIED EXTRACT FROM CHANGE OF NAME REGISTRATION
EXTRAIT CERTIFIÉ DU REGISTRE DE L'ENREGISTREMENT DE CHANGEMENT DE NOM

14150(114/02)

[Signature]
(Registrar General)
(Le registraire général de l'état civil)

Ontario CANADACHANGE OF NAME
CHANGEMENT DE NOMForm 25A - Formule 25A
Vital Statistics Act - Loi sur l'état civil

C0295687

Birthplace / Lieu de naissance
▼

OLD/VIEUX: STEWART, EDWARD GLENN

NEW/NOUVEAU: CORNELL, EDWARD GLENN

ONTARIO

Date of registration - Date d'enregistrement

JANUARY 18, 2016

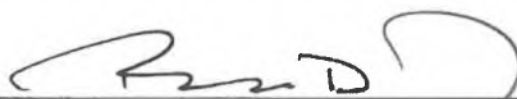


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91190 (14/07)*[Signature]*
(Registrar General)
(Le registraire général de l'état civil)

This is **Exhibit B** to the Affidavit of **Edward Cornell**
sworn before me at the City of Shediac in the
Province of N.B., this 23 day of February, 2022.



A Commissioner for Oaths
in and for New Brunswick

BRIAN D. HARKNETT
Commissioner of Oaths
My Commission Expires
31st December 2028



Jeune Louis

BE IT KNOWN that, with the approval of Her Majesty The Queen of Canada, the Governor General (the Right Honourable Jeanne Sauvé, P.C., C.C., C.M.M., C.D.), has awarded the

SACHEZ QUE, avec l'assentiment de Sa Majesté la Reine du Canada, le Gouverneur général, la très honorable Jeanne Sauvé, C.P., C.C., C.M.M., C.D., a décoré la décoration

MEDAL OF BRAVERY

MÉDAILLE DE LA BRAVOURE

to

Warrant Officer Edward Glenn Stewart

in recognition of an act of bravery in hazardous circumstances.

en reconnaissance d'un acte de bravoure accompli dans des circonstances dangereuses.

CITATION

At approximately 2 p.m., on December 14, 1985, WO Edward Stewart was carrying out duties at the Canadian Contingent Leave Centre in Limassol, Cyprus, when he heard cries for help coming from the water's edge. Immediately, he rushed to the scene and saw stranded in the water a member of the "Canadians Across The Sea" variety show who had paddled in a kayak beyond the protective breakwater and capsized. Without regard for his own safety, WO Stewart dove into the water and swam steadily towards the man, battling the rough waters and a strong undertow in an effort to come to his rescue. At this point, the man was quickly exhausting himself in a desperate attempt to stay above water. When he reached the man, WO Stewart managed to calm him down and keep him afloat. He then steered him clear of the rocks and hauled him to safety. WO Stewart's prompt action and physical courage saved the man's life.

GIVEN at Rideau Hall, Ottawa, this fifteenth day of June, 1987

FAIT à Rideau Hall, Ottawa, ce quinzième jour de juin 1987

BY Command,

PAR ordre,

Secretary to the Governor General / Chef du Cabinet du Gouverneur général

*Feb 23, 2022
I certify this document to
be a true copy of the original*

BRIAN D. HARKNETT
Commissioner of Oaths
My Commission Expires
31st December 2028

This is **Exhibit C** to the Affidavit of **Edward Cornell**
sworn before me at the City of Shediac in the
Province of N.B., this 23 day of February, 2022.



A Commissioner for Oaths
in and for New Brunswick

BRIAN D. HARKNETT
Commissioner of Oaths
My Commission Expires
31st December 2028



over

This is **Exhibit D** to the Affidavit of **Edward Cornell**
 sworn before me at the City of St John's in the
 Province of N.B., this 23 day of February, 2022.

BRIAN D. HARKNETT
 Commissioner of Oaths
 My Commission Expires
 31st December 2028

A Commissioner for Oaths
 in and for New Brunswick

Feb 23, 2023

I certify this document to be a
true copy of the original



BRIAN D. HARKNETT
Commissioner of Oaths
My Commission Expires
31st December 2028



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Centre for frequently
requested brochures

[Customer Care](#)

Step One:

Talk to us at your **Branch or Customer Contact Centre**
1800-4SCOTIA or 1-800-472-6842.

If the person you speak to at the branch/customer contact centre is not able to resolve your concern to your satisfaction, please speak directly to a management officer, who has the authority to resolve the majority of problems that arise

Step Two:

Contact the Office of the President.

If the management officer has been unable to resolve your complaint satisfactorily, a representative of the President & CEO will be pleased to assist you.



E-mail

mail.president@scotiabank.com



Mail

The President, Scotiabank
44 King Street West Toronto,
ON M5H 1H1

*Feb 23, 2022
I certify this document to be
a true copy of the original*

BRIAN D. HARKIN
Commissioner of the
My Commission Expires
31st December 2022

Court File No.: T-382-22

FEDERAL COURT**BETWEEN:**

JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD RISTAU

Applicants

- and -

GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, and ATTORNEY
GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

Respondents

APPLICATION UNDER Sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and
Rules 301 of the *Federal Courts Rules*.**AFFIDAVIT OF VINCENT GIRCYS**I, VINCENT GIRCYS, a retired member of the Ontario Provincial Police of the
City of Niagara, in the Province of Ontario, SWEAR THAT:**Background**

1. I am one of the named Applicants herein, and as such I have personal knowledge of the facts and matters herein deposed to except where based on information and belief in which case, I believe the same to be verily true.
2. I am 60 years old.
3. I am a retired member of the Ontario Provincial Police (the "OPP") where I was employed from 1982 to 2014.
4. While a member of the OPP, I was a forensic investigator where I estimate that I was involved in over 5,000 investigations during my career.
5. As a member of the OPP, I received numerous accolades including an exemplary

BvdaB 1 VC 1.

service medal (the **"Exemplary Service Medal"**). Attached and marked hereto as **Exhibit "A"** to this Affidavit is a copy of the Exemplary Service Medal.

6. In October of 2012, I was awarded the Auxiliary Liaison Officer of the Year Award by the OPP (the **"Officer of the Year Award"**). Attached and marked hereto as **Exhibit "B"** to this Affidavit is a picture of the Officer of the Year Award.

Involvement with the "Freedom Convoy"

7. I do not recall when I first heard about the so called "Freedom Convoy". I believe that I first heard about it through independent media sources.
8. I first began speaking out against what I perceived to be federal and provincial government overreach when the Adamson Barbecue restaurant in Ontario was shut down and its owner arrested in November of 2020, for remaining open to the public.
9. When I made the decision to go to Ottawa to attend the Freedom Convoy protests beginning on January 29, 2022 (the **"Protests"**) it was because I believed in the spirit of necessity to do so.
10. I became involved in the Protests on the first day. That Saturday afternoon on the first day of the Protests, I met with former Royal Canadian Mounted Police (**"RCMP"**) Corporal, Danny Bulford. He was there working at a setup operations centre as a facilitator between the truckers and the police to ensure the Protests would be done safely and to provide humanitarian aid.
11. My role in providing humanitarian aid involved coordinating the placement of additional toilets for the truckers and protestors, providing necessities such as food, water, and gasoline along with other general humanitarian aid (the **"Humanitarian Aid"**).
12. I also assisted Danny Bulford, along with other current active and retired police officers to provide what is commonly known in the policing community as **"VIP Security"**.

BV/AB² JG

13. The VIP Security entailed assisting with general security for Dr. Alexander and Dr. Hodgkinson who were presenting at a conference at the Sheraton Hotel in Ottawa during the Protests.
14. It is my understanding and belief that Dr. Alexander and Dr. Hodgkinson had received at least one or more death threats (the "**Death Threats**").
15. Beyond assisting with the Humanitarian Aid and providing VIP Security to protect Dr. Alexander and Dr. Hodgkinson from the Death Threats, I also made myself available if necessary to assist Danny Bulford and the other retired and active police officers with general crowd control and security related issues ("**Potential Security Issues**").
16. No Potential Security Issues came to my attention or arose at any time during my attendance at the Protests.
17. I remained at the Protests for approximately two to three weeks while providing the VIP Security and Humanitarian Aid.
18. My own personal observations of the Protests are that it was the most beautiful, peaceful, and inclusive protest I have ever seen. I personally observed zero animosity between anyone in attendance, the Protests were about airing legitimate grievances by Canadians from all walks of life and backgrounds.
19. I personally observed the Protests to be similar to a gathering that is standard at any Canadian exhibition or fair grounds.
20. My own personal observations of the Protests were that it was about us as Canadians getting our freedoms back and our constitutional rights upheld.

Types of Police Involved at the Protests

21. I personally observed two different types of police officers at the Protests.

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22. The first were regular uniformed officers with standard issued uniforms and shoulder insignias marking which police forces they were employed by (the "**Standard Police Units**"). I further witnessed police officers wearing tactical gear without shoulder flashes or insignias (the "**Tactical Police Units**").
23. I have personal knowledge and understanding of the differences between the Standard Police Units and the Tactical Police Units that were present. I have this knowledge and understanding based on my background as a retired OPP forensic investigator, and my police training which included training in tactical type police units.
24. Prior to February 18, 2022, the presence of the Tactical Police Units was relatively minimal. I would describe it as at most there were two groups of approximately 10 members of the Tactical Police Units throughout the entire area of the Protests. I estimate this area to be approximately 10 city blocks by 3 city blocks around Wellington Street and they were walking together as a group (the "**Area**").
25. Prior to February 18, 2022, the presence of the Standard Police Units was more noticeable than the Tactical Police Units. I estimate that any time prior to February 18, 2022, there would be approximately 100 to 150 officers from the Standard Police Units in the Area at a given time.
26. My observations of the interactions I had personally, and what I witnessed with the Standard Police Units prior to February 18, 2022, would be described as positive, friendly, and generally cordial interactions. Several officers from the Standard Police Units told me that they agreed with many of the grievances that were being aired at the Protests.
27. Prior to February 18, 2022, despite the positive, friendly, and cordial interactions, I would describe the number of officers in the Standard Police Units as being high given the general peace and tranquility amongst the Protestors, observers, and civilians in the Area.

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28. I observed a build up in terms of the presence of the Tactical Police Units beginning on February 18, 2022.
29. On February 19th and 20th, 2022, the build up of the Tactical Police Units became even more noticeable.
30. By February 19th and 20th, 2022, it was nearly entirely Tactical Police Units present with the Standard Police Units only present in the far outer perimeter of the Area.
31. I also further observed that certain areas within the Area specifically around the intersections of Metcalfe Street and Albert Street along with the areas of Wellington Street and Elgin Street were being blocked off by the Tactical Police Units (the "Tactical Police Unit Blockades").
32. The Tactical Police Unit Blockades were done by the Tactical Police Units in groups of 200 to 250 officers creating advancing human shield walls supported by officers behind them. These human shield walls entailed members of the Tactical Police Units forming a wall with approximately 150 officers supported by 50 to 100 officers behind them with some facing the other way.
33. I observed at least 4 to 6 separate Tactical Police Unit Blockades. I witnessed approximately 1,000 Tactical Police Unit officers on February 19th and 20th, 2022. Based on my observations, I estimate given the number that I personally witnessed, that there would have been approximately 2,000 Tactical Police Unit officers in total. I base this estimate on my knowledge and understanding from my policing experience as it pertains to the number of officers who would need to be on standby and for shift changes.
34. I decided to leave the Protests when I began fearing for my life after I observed what I describe as police brutality, particularly from the Tactical Police Units on February 19th

and 20th, 2022 in the Tactical Police Unit Blockades areas.

35. I observed several members of the Tactical Police Units possessing a level of weaponry and displaying a level of aggression that was uncalled for in the circumstances. Specifically, I observed the Tactical Police Units carrying:
- a. a standard issued sidearm;
 - b. 36-inch-long batons with square unstained natural wood cuts on the edges rather than the typical round edges seen on 24-inch-long black batons (the **"Unstained Square Wooden Dowels"**)
 - c. C8 semi-automatic rifles with high capacity 5.56 x 44mm NATO military standard bullets;
 - d. an abundance of high-capacity 5.56 x 44mm NATO military standard magazines affixed to their body armour; and
 - e. semi-automatic shotguns for firing rubber bullet launchers that I had never seen before.
36. The Tactical Police Unit blockades engaged in an aggressive technique towards the Protestors and observers commonly known as **"Snatching"**.
37. What Snatching entails is one of the officers in the human wall from the Tactical Police Unit Blockades breaking formation and grabbing a single individual Protestor or observer and pulls them behind the Tactical Police Unit Blockades line before the rest of the human wall reforms (the **"Snatched Individual"**).
38. The Snatched Individual is then beaten and arrested by the Tactical Police Unit officers who are behind the human wall in the Tactical Police Unit Blockades.
39. I personally observed or understand that on several occasions a Snatched Individual was beaten by the Tactical Police Unit officers with the butt end of their C8 semi-automatic rifles and struck with the Unstained Square Wooden Dowels.

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40. I did not witness anyone who was a Snatched Individual display or commit any acts of violence towards the Tactical Police Unit officers or the Tactical Police Unit Blockades.
41. Due to my own training, I could not understand why this level of aggression was being taken against non-violent protestors and observers.
42. I was a former Emergency Response Team personnel member of the OPP at one point during my service, which can accurately be described as a type of tactical police unit, and as such I understand the importance of crowd control and restraint.
43. I personally witnessed Tactical Police Unit officers striking non-violent protestors and observers with their Unstained Square Wooden Dowels.
44. I personally witnessed police horses trampling through crowds of non-violent protestors and observers.
45. I tried to reason with the Tactical Police Units on February 19th and 20th. I spoke with the members of the Tactical Police Units about section 52 of the *Constitution Act* and them being in violation of it. From my perspective, the Tactical Police Units had a clear reason to step back from these altercations on February 19th and 20th (the "Conversations").
46. The Conversations were ignored by the Tactical Police Units, and they threatened to arrest me if I continued to express my constitutional rights.
47. I did not view myself as a protestor, but rather an observer who was there to provide the Humanitarian Aid and VIP Security.
48. I returned to Ottawa on March 5th and 6th, 2022, and I noticed that Wellington Street has a sealed steel fence erected and the streets around it had concrete barriers around all potential entrance points. I further observed that it is a highly controlled area where

Bv/aB⁷ VG

only pedestrians can get through.

49. I personally observed that my movement throughout Ottawa was more difficult on March 5th and 6th, 2022, than it was at any point prior to February 19th, 2022.

Emergencies Act and Frozen Bank Account

50. It is my understanding and belief that sometime on or around February 14, 2022, the Federal Government invoked the *Emergencies Act*, RSC, 1985, c. 22 (4th Supp.) (the "*Emergencies Act*") in response to the Protests.
51. I have been directly and substantially harmed by the *Emergencies Act* for my involvement in the Protests.
52. On Saturday, February 19, 2022, I received a voicemail from CIBC stating for me to call back and that there was a problem with my account (the "**Voicemail**"). I have saved and kept an original copy of the Voicemail. The number that called and left the Voicemail was 1-800-465-2255.
53. On Saturday, February 19, 2022, I spoke with an individual from CIBC who stated to me that my accounts were frozen (the "**Feb 19. Phone Call**"). The individual I spoke with was apologetic and stated to me that it was not their doing, and that the request came from the RCMP. The individual I spoke with further informed me that my account would not be unfrozen until the *Emergencies Act* declaration was over or until the RCMP would allow my account to be unfrozen. Attached and marked hereto as **Exhibit "C"** to this Affidavit is a screenshot of call log for the Feb. 19 Phone Call.
54. From February 19, 2022, until February 22, 2022, I was unable to access or use funds from my:
- a. CIBC credit card;
 - b. CIBC debit card; and
 - c. Simplii Financial debit card.

(collectively, the "**Seized Bank Accounts**").

55. When I logged into the Seized Bank Accounts on CIBC, what showed up was a screen where all the monetary amounts under my different accounts showed a small dash for each amount without the actual dollar amounts. Regrettably, I did not save a screenshot of this at the time, but I wish I had.
56. On February 23, 2022, I once again spoke with an individual from CIBC about the Seized Bank Accounts. I was informed by this individual that the call was being recorded. She claimed that the RCMP had asked CIBC yesterday to unfreeze the Seized Bank Accounts and she was giving me notice to that effect (the "**Feb. 23 Phone Call**"). Attached and marked hereto as **Exhibit "D"** is a screen shot of the call log for the Feb. 23 Phone Call.

Irreparable Harm and Lasting Effects

57. My experience with the Seized Bank Accounts has been traumatic and personally devastating.
58. I had, at the time of the Seized Bank Accounts, approximately \$20 in cash with me and I was approximately 6 hours away from home.
59. I was forced to reach out to people I did not even know, and who through their own acts of kindness offered me some cash so I could put fuel in my vehicle to get home and have something to eat (the "**Kind-hearted Canadians**").
60. If it was not for the Kind-hearted Canadians, I do not know how I would have been able to get home or feed myself.
61. All my bills and accounts from the Seized Bank Accounts were generally paid in full and on time.

62. What happened to me was that the federal government locked me out of putting food in my mouth, gas in my vehicle, and my ability to pay for my hotel.
63. I could not at the time understand why this happened to me. I still do not understand why the Seized Bank Accounts happened to me.
64. I attended the Protests to provide the Humanitarian Aid and VIP Security. My only explanation for why the Seized Bank Accounts happened to me is because I was speaking out about my constitutional rights.
65. I view the Seized Bank Accounts as an act by the federal government in conjunction with our police agencies and banking institutions to punish and target myself personally.
66. The Seized Bank Accounts and my experiences from this has me terrified. I do not know what will happen to me next.
67. I have lost my faith in our banking system, our policing system, and our federal government. I am contemplating selling my home and leaving Canada permanently, but I do not know if I can sell my home. I worry that my accounts will be frozen again like they were during the time of the Seized Bank Accounts.
68. I do not believe I did anything to warrant the Seized Bank Accounts and the federal government needs to be held accountable for what they did to me.
69. I am not a criminal.
70. I am not a terrorist.
71. I am a retired Canadian citizen who honourably served his country as a police officer and member of the OPP.

72. As a former forensic investigator with the OPP, I conducted hundreds of death investigations and homicides. This included dealing with and investigating cases where bodies were dismembered.
73. Nothing in my experience as a member of the OPP, including my role as a former forensic investigator, has ever caused me the level of fear and psychological trauma that my experiences with the Seized Bank Accounts has.
74. My ongoing fear as a direct result of the Seized Bank Account is detrimentally affecting my sleep. This trauma is ongoing, and I do not know if it will ever subside.
75. I have served my country well, and the citizens of this country are where my loyalty is. I do not lean towards any political party. My attendance at the Protests was not political. I just wanted to provide Humanitarian Aid, VIP Security, and my freedoms back which I am continuing to see a complete erosion of.
76. I believe that I was personally targeted by the federal government and knowing that I was targeted by the federal government is harming my well being.
77. I hope that no Canadian in the future goes through what I have gone through and am continuing to go through as a result the Seized Bank Accounts.
78. I make this affidavit in support of an application under sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and Rule 301 of the *Federal Courts Rules* and for no improper purpose.

Sworn before me in the City of Calgary in the Province of Alberta on March 8th 2022

Bath-Sheba van den Berg
 Commissioner for Taking Affidavits
 (or as the case may be)
 BATH-SHEBA VAN DEN BERG
 Student-at-Law
 Notary Public
 A Commissioner for Oaths
 In and for the Province of Alberta

Vincent A. Giroux
 (Signature of Deponent)

VINCENT A. GIRCOUS

Bv/aB

VG

Index

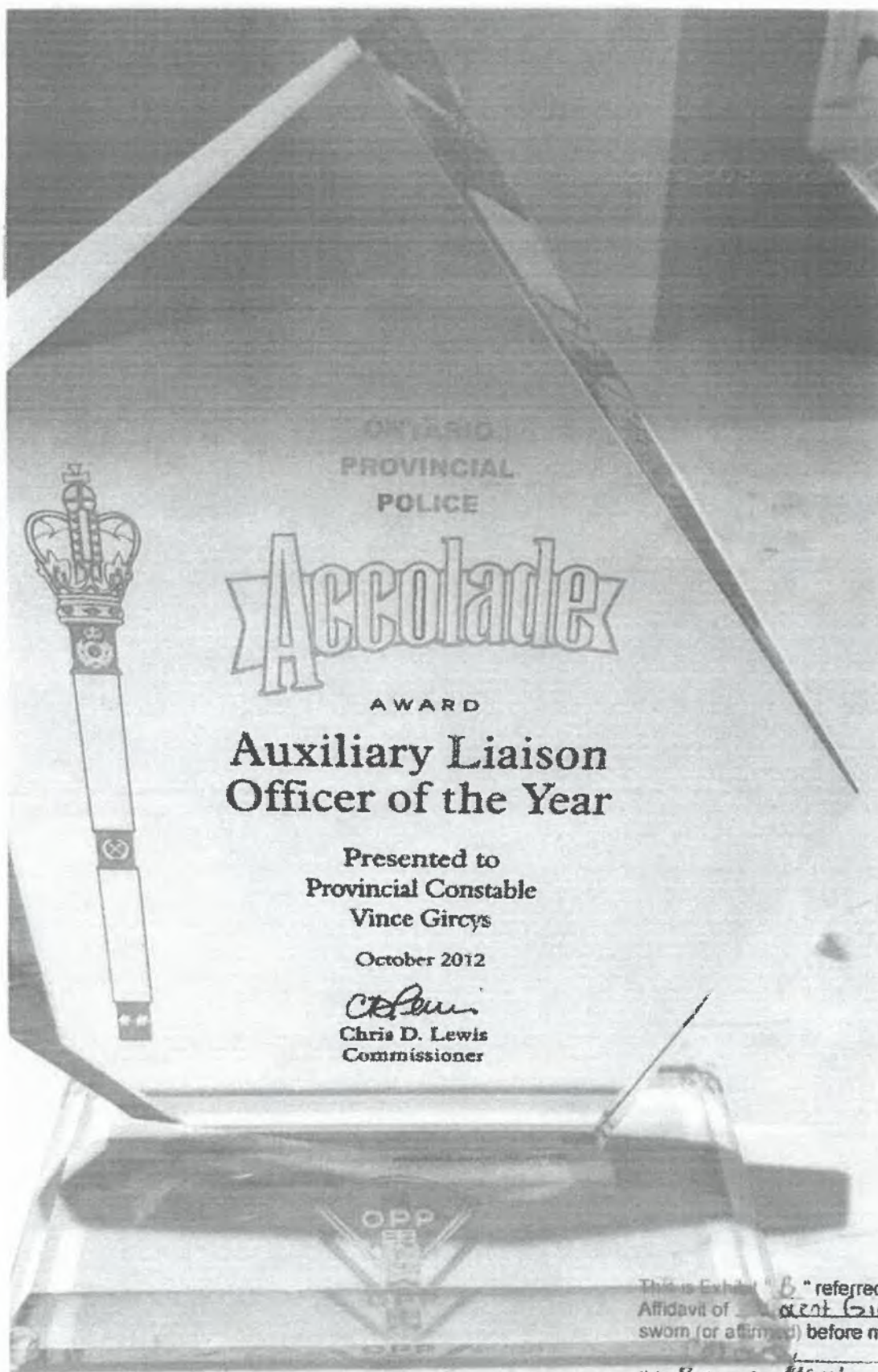
Description of Exhibits	Exhibit #
Copy of the Exemplary Service Medal	A
Picture of the Officer of the Year Award	B
Screenshot of the call log for the Feb 19 Phone Call	C
Screenshot of the call log for the Feb 23 Phone Call	D

Bv/dB VQ

BATH-SHÉBA VAN DEN BERG
Student-at-Law
Notary Public
A Commissioner for Oaths
In and for the Province of Alberta

This is Exhibit "A" referred to in the
Affidavit of Vincent Giroux
sworn (or affirmed) before me at
Calgary, AB
this 8 day of March, 2022
Bath-Shéba Van Den Berg
A Commissioner for Oaths in and for the Province of Alberta





This is Exhibit "B" referred to in the
Affidavit of Vince Gircys
sworn (or affirmed) before me at

_____, AB
this 8 day of March 2022

Bath-Sheba van den Berg
A Commissioner for Oaths in and for the Province of Alberta

BATH-SHÉBA VAN DEN BERG
Student-at-Law
Notary Public
A Commissioner for Oaths
In and for the Province of Alberta

BvAB VG



10:24 PM

H+ 26%



Call details



1 800-465-2255



Outgoing call

2m 46s

Saturday, February 19, 2022, 2:42 PM



Copy number



Edit number before call



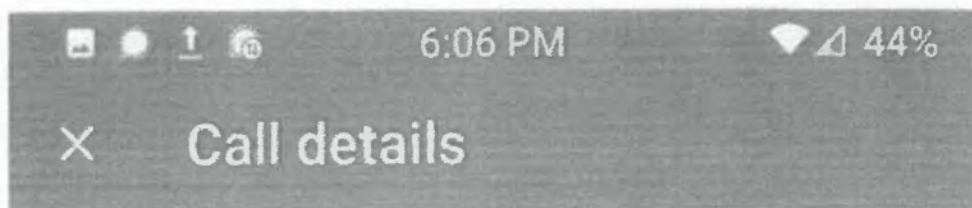
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This is Exhibit "C" referred to in the
Affidavit of Vincent Gray's
sworn (or affirmed) before me at
Calgary, AB
this 8 day of March 2022

Bath-Sheba Van Berg
A Commissioner for Oaths in and for the Province of Alberta

BATH-SHÉBA VAN DEN BERG
Student-at-Law
Notary Public
A Commissioner for Oaths
In and for the Province of Alberta

B/AB VQ



+1 800-465-2255



Incoming call

3m 36s

Wednesday, February 23, 2022, 11:25 AM



Copy number



Edit number before call



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This is Exhibit "O" referred to in the
Affidavit of Violent Gangs
sworn (or affirmed) before me at
Calgary, AB
this 8 day of March 2022
Bath-Shebba van den Berg
A Commissioner for Oaths in and for the Province of Alberta

BATH-SHÉBA VAN DEN BERG
Student-at-Law
Notary Public
A Commissioner for Oaths
In and for the Province of Alberta

Bu/ab VG

Court File No.: T-382-22

FEDERAL COURT

B E T W E E N :

JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD RISTAU

Applicants

- and -

**GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, and ATTORNEY
GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS**

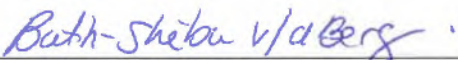
Respondents

**APPLICATION UNDER Sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and
Rules 301 of the *Federal Courts Rules*.**

I, **BATH-SHEBA VAN DEN BERG, of the City of Calgary, in the Province of Alberta,
CERTIFY:**

1. That I am a Commissioner of Oaths in and for Alberta, and I am satisfied that the process under NPP#2020-02 and the Federal Court Practice Direction (COVID-19): Update #7 (January 18, 2021) paragraphs 19 and 20 was necessary to swear the Affidavit of Vincent Gircys, Applicant, in the herein proceedings on March 8th, 2022, because it was impossible or unsafe, for reasons of provincial border lockdowns, location, and health, for Vincent Gircys, Applicant, and myself to be physically present together.
2. The two copies of the Affidavits are attached hereto as required by paragraph 8 of the NPP#2020-02.

Dated on March 8th, 2022, at Calgary, Alberta.



BATH-SHEBA VAN DEN BERG

Court File No.: T-382-22

FEDERAL COURT

B E T W E E N :

JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD RISTAU

Applicants

- and -

GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA, and ATTORNEY
GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY AND EMERGENCY
PREPAREDNESS

Respondents

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1. I am one of the named Applicants herein, and as such I have personal knowledge of the facts and matters herein deposed to except where based on information and belief in which case, I believe the same to be verily true.
2. I am 60 years old.
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By/as

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12. I also assisted Danny Bulford, along with other current active and retired police officers to provide what is commonly known in the policing community as "**VIP Security**".

Bv/ab

13. The VIP Security entailed assisting with general security for Dr. Alexander and Dr. Hodgkinson who were presenting at a conference at the Sheraton Hotel in Ottawa during the Protests.
14. It is my understanding and belief that Dr. Alexander and Dr. Hodgkinson had received at least one or more death threats (the "**Death Threats**").
15. Beyond assisting with the Humanitarian Aid and providing VIP Security to protect Dr. Alexander and Dr. Hodgkinson from the Death Threats, I also made myself available if necessary to assist Danny Bulford and the other retired and active police officers with general crowd control and security related issues ("**Potential Security Issues**").
16. No Potential Security Issues came to my attention or arose at any time during my attendance at the Protests.
17. I remained at the Protests for approximately two to three weeks while providing the VIP Security and Humanitarian Aid.
18. My own personal observations of the Protests are that it was the most beautiful, peaceful, and inclusive protest I have ever seen. I personally observed zero animosity between anyone in attendance, the Protests were about airing legitimate grievances by Canadians from all walks of life and backgrounds.
19. I personally observed the Protests to be similar to a gathering that is standard at any Canadian exhibition or fair grounds.
20. My own personal observations of the Protests were that it was about us as Canadians getting our freedoms back and our constitutional rights upheld.

Types of Police Involved at the Protests

21. I personally observed two different types of police officers at the Protests.

Bv/aB

22. The first were regular uniformed officers with standard issued uniforms and shoulder insignias marking which police forces they were employed by (the "**Standard Police Units**"). I further witnessed police officers wearing tactical gear without shoulder flashes or insignias (the "**Tactical Police Units**").
23. I have personal knowledge and understanding of the differences between the Standard Police Units and the Tactical Police Units that were present. I have this knowledge and understanding based on my background as a retired OPP forensic investigator, and my police training which included training in tactical type police units.
24. Prior to February 18, 2022, the presence of the Tactical Police Units was relatively minimal. I would describe it as at most there were two groups of approximately 10 members of the Tactical Police Units throughout the entire area of the Protests. I estimate this area to be approximately 10 city blocks by 3 city blocks around Wellington Street and they were walking together as a group (the "**Area**").
25. Prior to February 18, 2022, the presence of the Standard Police Units was more noticeable than the Tactical Police Units. I estimate that any time prior to February 18, 2022, there would be approximately 100 to 150 officers from the Standard Police Units in the Area at a given time.
26. My observations of the interactions I had personally, and what I witnessed with the Standard Police Units prior to February 18, 2022, would be described as positive, friendly, and generally cordial interactions. Several officers from the Standard Police Units told me that they agreed with many of the grievances that were being aired at the Protests.
27. Prior to February 18, 2022, despite the positive, friendly, and cordial interactions, I would describe the number of officers in the Standard Police Units as being high given the general peace and tranquility amongst the Protestors, observers, and civilians in the Area.

Bv/aB

28. I observed a build up in terms of the presence of the Tactical Police Units beginning on February 18, 2022.
29. On February 19th and 20th, 2022, the build up of the Tactical Police Units became even more noticeable.
30. By February 19th and 20th, 2022, it was nearly entirely Tactical Police Units present with the Standard Police Units only present in the far outer perimeter of the Area.
31. I also further observed that certain areas within the Area specifically around the intersections of Metcalfe Street and Albert Street along with the areas of Wellington Street and Elgin Street were being blocked off by the Tactical Police Units (the **"Tactical Police Unit Blockades"**).
32. The Tactical Police Unit Blockades were done by the Tactical Police Units in groups of 200 to 250 officers creating advancing human shield walls supported by officers behind them. These human shield walls entailed members of the Tactical Police Units forming a wall with approximately 150 officers supported by 50 to 100 officers behind them with some facing the other way.
33. I observed at least 4 to 6 separate Tactical Police Unit Blockades. I witnessed approximately 1,000 Tactical Police Unit officers on February 19th and 20th, 2022. Based on my observations, I estimate given the number that I personally witnessed, that there would have been approximately 2,000 Tactical Police Unit officers in total. I base this estimate on my knowledge and understanding from my policing experience as it pertains to the number of officers who would need to be on standby and for shift changes.
34. I decided to leave the Protests when I began fearing for my life after I observed what I describe as police brutality, particularly from the Tactical Police Units on February 19th

and 20th, 2022 in the Tactical Police Unit Blockades areas.

35. I observed several members of the Tactical Police Units possessing a level of weaponry and displaying a level of aggression that was uncalled for in the circumstances. Specifically, I observed the Tactical Police Units carrying:
- a. a standard issued sidearm;
 - b. 36-inch-long batons with square unstained natural wood cuts on the edges rather than the typical round edges seen on 24-inch-long black batons (the **"Unstained Square Wooden Dowels"**)
 - c. C8 semi-automatic rifles with high capacity 5.56 x 44mm NATO military standard bullets;
 - d. an abundance of high-capacity 5.56 x 44mm NATO military standard magazines affixed to their body armour; and
 - e. semi-automatic shotguns for firing rubber bullet launchers that I had never seen before.
36. The Tactical Police Unit blockades engaged in an aggressive technique towards the Protestors and observers commonly known as **"Snatching"**.
37. What Snatching entails is one of the officers in the human wall from the Tactical Police Unit Blockades breaking formation and grabbing a single individual Protestor or observer and pulls them behind the Tactical Police Unit Blockades line before the rest of the human wall reforms (the **"Snatched Individual"**).
38. The Snatched Individual is then beaten and arrested by the Tactical Police Unit officers who are behind the human wall in the Tactical Police Unit Blockades.
39. I personally observed or understand that on several occasions a Snatched Individual was beaten by the Tactical Police Unit officers with the butt end of their C8 semi-automatic rifles and struck with the Unstained Square Wooden Dowels.

BVA/B

40. I did not witness anyone who was a Snatched Individual display or commit any acts of violence towards the Tactical Police Unit officers or the Tactical Police Unit Blockades.
41. Due to my own training, I could not understand why this level of aggression was being taken against non-violent protestors and observers.
42. I was a former Emergency Response Team personnel member of the OPP at one point during my service, which can accurately be described as a type of tactical police unit, and as such I understand the importance of crowd control and restraint.
43. I personally witnessed Tactical Police Unit officers striking non-violent protestors and observers with their Unstained Square Wooden Dowels.
44. I personally witnessed police horses trampling through crowds of non-violent protestors and observers.
45. I tried to reason with the Tactical Police Units on February 19th and 20th. I spoke with the members of the Tactical Police Units about section 52 of the *Constitution Act* and them being in violation of it. From my perspective, the Tactical Police Units had a clear reason to step back from these altercations on February 19th and 20th (the "**Conversations**").
46. The Conversations were ignored by the Tactical Police Units, and they threatened to arrest me if I continued to express my constitutional rights.
47. I did not view myself as a protestor, but rather an observer who was there to provide the Humanitarian Aid and VIP Security.
48. I returned to Ottawa on March 5th and 6th, 2022, and I noticed that Wellington Street has a sealed steel fence erected and the streets around it had concrete barriers around all potential entrance points. I further observed that it is a highly controlled area where

only pedestrians can get through.

49. I personally observed that my movement throughout Ottawa was more difficult on March 5th and 6th, 2022, than it was at any point prior to February 19th, 2022.

Emergencies Act and Frozen Bank Account

50. It is my understanding and belief that sometime on or around February 14, 2022, the Federal Government invoked the *Emergencies Act*, RSC, 1985, c. 22 (4th Supp.) (the "***Emergencies Act***") in response to the Protests.
51. I have been directly and substantially harmed by the *Emergencies Act* for my involvement in the Protests.
52. On Saturday, February 19, 2022, I received a voicemail from CIBC stating for me to call back and that there was a problem with my account (the "**Voicemail**"). I have saved and kept an original copy of the Voicemail. The number that called and left the Voicemail was 1-800-465-2255.
53. On Saturday, February 19, 2022, I spoke with an individual from CIBC who stated to me that my accounts were frozen (the "**Feb 19. Phone Call**"). The individual I spoke with was apologetic and stated to me that it was not their doing, and that the request came from the RCMP. The individual I spoke with further informed me that my account would not be unfrozen until the *Emergencies Act* declaration was over or until the RCMP would allow my account to be unfrozen. Attached and marked hereto as **Exhibit "C"** to this Affidavit is a screenshot of call log for the Feb. 19 Phone Call.
54. From February 19, 2022, until February 22, 2022, I was unable to access or use funds from my:
- a. CIBC credit card;
 - b. CIBC debit card; and
 - c. Simplii Financial debit card.

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(collectively, the "**Seized Bank Accounts**").

55. When I logged into the Seized Bank Accounts on CIBC, what showed up was a screen where all the monetary amounts under my different accounts showed a small dash for each amount without the actual dollar amounts. Regrettably, I did not save a screenshot of this at the time, but I wish I had.
56. On February 23, 2022, I once again spoke with an individual from CIBC about the Seized Bank Accounts. I was informed by this individual that the call was being recorded. She claimed that the RCMP had asked CIBC yesterday to unfreeze the Seized Bank Accounts and she was giving me notice to that effect (the "**Feb. 23 Phone Call**"). Attached and marked hereto as **Exhibit "D"** is a screen shot of the call log for the Feb. 23 Phone Call.

Irreparable Harm and Lasting Effects

57. My experience with the Seized Bank Accounts has been traumatic and personally devastating.
58. I had, at the time of the Seized Bank Accounts, approximately \$20 in cash with me and I was approximately 6 hours away from home.
59. I was forced to reach out to people I did not even know, and who through their own acts of kindness offered me some cash so I could put fuel in my vehicle to get home and have something to eat (the "**Kind-hearted Canadians**").
60. If it was not for the Kind-hearted Canadians, I do not know how I would have been able to get home or feed myself.
61. All my bills and accounts from the Seized Bank Accounts were generally paid in full and on time.

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62. What happened to me was that the federal government locked me out of putting food in my mouth, gas in my vehicle, and my ability to pay for my hotel.
63. I could not at the time understand why this happened to me. I still do not understand why the Seized Bank Accounts happened to me.
64. I attended the Protests to provide the Humanitarian Aid and VIP Security. My only explanation for why the Seized Bank Accounts happened to me is because I was speaking out about my constitutional rights.
65. I view the Seized Bank Accounts as an act by the federal government in conjunction with our police agencies and banking institutions to punish and target myself personally.
66. The Seized Bank Accounts and my experiences from this has me terrified. I do not know what will happen to me next.
67. I have lost my faith in our banking system, our policing system, and our federal government. I am contemplating selling my home and leaving Canada permanently, but I do not know if I can sell my home. I worry that my accounts will be frozen again like they were during the time of the Seized Bank Accounts.
68. I do not believe I did anything to warrant the Seized Bank Accounts and the federal government needs to be held accountable for what they did to me.
69. I am not a criminal.
70. I am not a terrorist.
71. I am a retired Canadian citizen who honourably served his country as a police officer and member of the OPP.

BVA8

72. As a former forensic investigator with the OPP, I conducted hundreds of death investigations and homicides. This included dealing with and investigating cases where bodies were dismembered.
73. Nothing in my experience as a member of the OPP, including my role as a former forensic investigator, has ever caused me the level of fear and psychological trauma that my experiences with the Seized Bank Accounts has.
74. My ongoing fear as a direct result of the Seized Bank Account is detrimentally affecting my sleep. This trauma is ongoing, and I do not know if it will ever subside.
75. I have served my country well, and the citizens of this country are where my loyalty is. I do not lean towards any political party. My attendance at the Protests was not political. I just wanted to provide Humanitarian Aid, VIP Security, and my freedoms back which I am continuing to see a complete erosion of.
76. I believe that I was personally targeted by the federal government and knowing that I was targeted by the federal government is harming my well being.
77. I hope that no Canadian in the future goes through what I have gone through and am continuing to go through as a result the Seized Bank Accounts.
78. I make this affidavit in support of an application under sections 18(1), 18.1, and 18.2 of the *Federal Courts Act* and Rule 301 of the *Federal Courts Rules* and for no improper purpose.

Sworn before me in the City of Calgary in the Province of Alberta on March 8th 2022

Commissioner for Taking Affidavits
(or as the case may be)

(Signature of Deponent)

BU aB

Index

Description of Exhibits	Exhibit #
Copy of the Exemplary Service Medal	A
Picture of the Officer of the Year Award	B
Screenshot of the call log for the Feb 19 Phone Call	C
Screenshot of the call log for the Feb 23 Phone Call	D

Bija B

000215
This is Exhibit "A" referred to in the
Affidavit of Vincent Girys
sworn (or affirmed) before me at
Calgary, AB
this 8 day of March 2022

A Commissioner for Oaths in and for the Province of Alberta

B498





This is Exhibit "B" referred to in the
Affidavit of Vince Gircys
sworn (or affirmed) before me at
Calgary, AB
this 8 day of March 2022

A Commissioner for Oaths in and for the Province of Alberta

B v/d B



Call details



1 800-465-2255



Outgoing call

2m 46s

Saturday, February 19, 2022, 2:42 PM



Copy number



Edit number before call



Delete

This is Exhibit "C" referred to in the
Affidavit of Vincent Giroux
sworn (or affirmed) before me at
Calgary, AB
this 8 day of March 2022

A Commissioner for Oaths in and for the Province of Alberta

Bv/aB



Call details



+1 800-465-2255



Incoming call

3m 36s

Wednesday, February 23, 2022, 11:25 AM



Copy number



Edit number before call



Delete

This is Exhibit "D" referred to in the
Affidavit of Vincent Giroux
sworn (or affirmed) before me at
Calgary, AB
this 8 day of March 2022

A Commissioner for Oaths in and for the Province of Alberta

Bv/ag.

Court File No.: T-306-22

FEDERAL COURT

B E T W E E N:

CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

**WRITTEN REPRESENTATIONS
OF THE ATTORNEY GENERAL OF CANADA
Motion to Strike**

April 11, 2022

ATTORNEY GENERAL OF CANADA

Department of Justice Canada

Ontario Regional Office
National Litigation Sector
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1

Fax: (416) 973-0809

David Aaron / John Provart / Nur Muhammed-Ally

Tel

[REDACTED]

[REDACTED]

AND IN:

Court File No.: T-316-22

FEDERAL COURT

B E T W E E N:

CANADIAN CIVIL LIBERTIES ASSOCIATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

AND IN:

Court File No.: T-347-22

FEDERAL COURT

B E T W E E N:

CANADIAN CONSTITUTION FOUNDATION

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

AND IN:

Court File No. T-382-22

FEDERAL COURT

B E T W E E N:

**JEREMIAH JOST, EDWARD CORNELL, VINCENT GIRCYS, and HAROLD
RISTAU**

Applicants

and

**GOVERNOR IN COUNCIL, HER MAJESTY IN RIGHT OF CANADA,
ATTORNEY GENERAL OF CANADA, and MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

**WRITTEN REPRESENTATION
OF THE ATTORNEY GENERAL OF CANADA**

Motion to Strike

April 11, 2022

ATTORNEY GENERAL OF CANADA

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[REDACTED]

[REDACTED]

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OVERVIEW

1. It is plain and obvious that the underlying applications are moot and that all the Applicants, save for two, lack standing. These applications for judicial review challenge the now revoked proclamation declaring a public order emergency under the *Emergencies Act*, and the associated measures in the *Emergency Measures Regulations* (Regulations) and Emergency Economic Measures Order (Order) (collectively, the Emergency Measures). Those very limited measures were only in effect for nine (9) days. Four applications for judicial review (applications) were commenced between February 17, 2022 and February 23, 2022 – the day the Emergency Measures were revoked.

2. All of the applications are moot as there is no live controversy between the parties. The Emergency Measures have been revoked; there is nothing concrete or tangible for the Court to opine on, as it noted in the context of an interim injunction in one of the applications at issue. The Court ought not to exercise its discretion to hear the moot matters as there is no adversarial context. While some disagreement regarding public policy choices may remain, there is no “collateral consequence” that requires a hearing. The Court would be straying outside its traditional role by making law in the abstract; this is especially the case in what appears to be a relative vacuum of concrete *Charter* facts. In any event, legislated review mechanisms are mandated by the *Emergencies Act* itself, in the form of a Parliamentary Review Committee and a legislated inquiry (Inquiry) into the circumstances that led to the declaration of a public order emergency, and the measures taken in response, which renders these applications duplicative and unnecessary, in the circumstances.

3. With the exception of Applicants Cornell and Gircys, none of the Applicants satisfy the requirements for standing. Neither Kristen Nagle (Nagle) nor Canadian Frontline Nurses (CFN) had their bank accounts frozen and their participation in the events giving rise to the public order emergency continued after the Emergency Measures were enacted. Jeremiah Jost (Jost) and Harold Ristau (Ristau) did not have their financial assets frozen nor were they more directly affected by the Emergency Measures than any other member of the public. Public interest standing should not be

granted to the Canadian Civil Liberties Association (CCLA) or the Canadian Constitution Foundation (CCF) because their proposed arguments are moot and duplicate the arguments of those with direct standing (i.e. Cornell and Gircys). Moreover, the issues they raise will be considered by way of the Parliamentary review and legislated Inquiry processes. Therefore, their applications are not an effective means of bringing these matters before the Court.

PART I – FACTS

A. TIMELINE AND LEGISLATIVE SCHEME

1) The *Emergencies Act*

4. On February 14, 2022, the Governor in Council (GIC) issued a proclamation declaring a public order emergency pursuant to section 17(1) of the *Emergencies Act* thereby necessitating the taking of special temporary measures to deal with the emergency (the Proclamation).

5. On February 15, 2022, the GIC made the Regulations and the Order pursuant to subsection 19(1) of the *Emergencies Act*.

6. On February 21, 2022, the House of Commons voted to confirm the declaration of a public order emergency proclaimed on February 14, 2022.

7. On February 23, 2022, the GIC directed that a proclamation be issued revoking the declaration of a public order emergency, thereby rendering the Regulations and Order of no force or effect. At that time, and pursuant to subsection 15(2) of the *Emergencies Act*, the revocation of the public order emergency resulted in “all orders and regulations made pursuant to the declaration or all orders and regulations so made [...] are revoked effective on the revocation of the declaration.”

8. The *Emergencies Act* requires that a Parliamentary Review Committee consisting of members from both Houses of Parliament be created in order to review

the “exercise of powers and the performance of duties and functions pursuant to a declaration of emergency.”¹

9. In addition to the Parliamentary Review Committee, the *Emergencies Act* stipulates that the GIC must “cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency” within sixty days after the revocation of the declaration of emergency.²

10. Finally, the *Emergencies Act* requires that a report of the Inquiry be laid before each House of Parliament within 360 days of the revocation of the declaration of emergency.³

2) The Applicants

11. Four applications for judicial review have been commenced challenging the Emergency Measures:

Canadian Frontline Nurses and Kristen Nagle (T-306-22)

12. On February 18, 2022, CFN and Nagle commenced an application for judicial review challenging the Proclamation on the basis that it is *ultra vires*, unreasonable, and violates the *Charter* and *Canadian Bill of Rights*.

13. CFN is a not-for-profit corporation. Nagle is a registered nurse, and a member and director of CFN. Both oppose public health mandates and restrictions imposed in response to the COVID-19 pandemic.

14. CFN and Nagle each assert direct standing on the basis of their participation in the “Freedom Convoy 2022” blockade of downtown Ottawa (Convoy). Neither claim public interest standing.

¹ [Emergencies Act](#), s. 62(1), RSC 1985, c 22 (4th Supp) [*Emergencies Act*].

² *Ibid*, [s. 63\(1\)](#).

³ *Ibid*, [s. 63\(2\)](#).

Canadian Civil Liberties Association (T-316-22)

15. On February 18, 2022, the CCLA commenced an application for judicial review challenging the Emergency Measures on the basis that they are *ultra vires*, unreasonable, and/or violate the *Charter*.

16. The CCLA describes itself as an independent, non-profit, non-governmental organization dedicated to defending and promoting fundamental human rights and civil liberties.

17. The CCLA asserts public interest standing based on its record of engagement in issues related to human rights and civil liberties.

18. The CCLA does not allege that it was directly affected by the decisions it challenges.

Canadian Constitution Foundation (T-347-22)

19. On February 23, 2022, the CCF commenced an application for judicial review challenging the Emergency Measures, on the basis that they are unlawful and violate the *Charter*.

20. The CCF describes itself as an independent, national, and non-partisan charity that seeks to protect constitutional freedoms.

21. It asserts public interest standing based on its record of engagement in constitutional issues.

22. The CCF does not assert that it was directly affected by the decisions it challenges.

Jost, Cornell, Gircys, and Ristau (T-382-22)

23. On February 24, 2022, Jeremiah Jost (Jost), Edward Cornell (Cornell), Vincent Gircys (Gircys), and Harold Ristau (Ristau) (collectively, the Jost applicants) commenced an application for judicial review challenging the Emergency Measures on

the basis that they are *ultra vires*, violate the *Constitution Act*, 1867, the *Charter*, the *Canadian Bill of Rights*, and international law and agreements.

24. The Jost applicants are private citizens who claim direct standing based on their participation in the Convoy. They do not assert public interest standing. Unlike Jost and Ristau, Cornell and Gircys were directly affected by the Emergency Measures since their financial accounts were frozen pursuant to the Order.

PART II – ISSUES

25. Whether it is plain and obvious that the applications should be struck without leave to amend, as:

- (a) They are moot, and the discretionary factors do not weigh in favour of hearing the matter.
- (b) The majority of the Applicants lack direct standing.
- (c) Public interest standing is not warranted in the circumstances.

PART III – SUBMISSIONS

A. TEST FOR A MOTION TO STRIKE

26. As Justice MacTavish noted in *Lukács*, the Court’s jurisdiction to strike a proceeding derives from its inherent jurisdiction to control its own process.⁴

27. The threshold to be applied on a motion to strike is whether the application is “bereft of any possibility of success” such that it should be struck based on mootness or standing.⁵ The Court will consider whether it is plain and obvious that the application

⁴ *Lukács v Canada (President, Natural Sciences and Engineering Research Council*, [2015 FC 267](#) at para [24](#) [*Lukács*], cited with approval in *1397280 Ontario Ltd v Canada (Employment and Social Development)*, [2020 FC 20](#) at para [11](#) [*1397280 Ontario*]; see also *Rebel News Network Ltd v Canada (Leaders’ Debates Commission)*, [2020 FC 1181](#) at para [32](#) [*Rebel News*].

⁵ *Rebel News* at paras [33-34](#).

is doomed to fail,⁶ or whether there is “a ‘show stopper’ or a ‘knockout punch’ – an obvious, fatal flaw striking at the root of this Court’s power to entertain the application.”⁷

28. Although this threshold is high, this Court and the Federal Court of Appeal have struck applications for judicial review on many occasions, particularly on the basis of mootness⁸ and standing.⁹

29. A judicial determination that a case is moot and lacking discretionary grounds for proceeding provides a valid basis for dismissal. Additionally, alleging that the *Charter* has been infringed “does not automatically convert a moot application into a live controversy nor does it require the Court to exercise its discretionary authority to hear a moot application.”¹⁰ The task of the motions judge is to “gain ‘a realistic

⁶ *Wenham v Canada (Attorney General)*, [2018 FCA 199](#) at paras [32-33](#).

⁷ *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, [2013 FCA 250](#) at para [47](#) [*JP Morgan*].

⁸ See, e.g., *Cardin v Canada (AG)*, [2017 FCA 150](#); *Lukács v Canada (Transportation Agency)*, [2016 FCA 227](#); *JP Morgan*; *Fogal v Canada* (2000), [1999 CanLII 7932](#), 167 FTR 266 (TD) [*Fogal*], aff’d [\[2000\] FCJ No 916](#) (CA) (QL), leave to appeal to SCC ref’d [\[2001\] SCCA No 84](#) (QL); *Labbé v Létourneau* (1997), [1997 CanLII 4928](#), 128 FTR 291 (TD); *Rahman v Canada (Minister of Citizenship and Immigration)*, [2002 FCT 137](#) [*Rahman*]; *Narvey v McNamara*, [1997 CanLII 5553](#), 140 FTR 1 (TD); *Canada (AG) v Canada (Information Commissioner)*, [1997 CanLII 6362](#), [1998] 1 FC 337 (TD); *Lee v Canada (Minister of Citizenship and Immigration)*, [1997 CanLII 4837](#), 126 FTR 229 (TD); *Pauktuutit, Inuit Women's Assn v Canada*, [2003 FCT 139](#) at paras [13-23](#); *Moses v Canada*, [2003 FC 1417](#) at para [11](#); *Chiu v Canada (National Parole Board)*, [2005 FC 1516](#); *Lukács*; *Khalifa v Canada (Minister of Citizenship and Immigration)*, [2016 FC 119](#); *Kardava v Canada (Minister of Citizenship and Immigration)*, [2016 FC 159](#); *0769449 BC Ltd (Kimberly Transport) v Vancouver Fraser (Port Authority)*, [2016 FC 645](#); [1397280 Ontario](#) at para [11](#).

⁹ *Soprema Inc. v Canada (Attorney General)*, [2021 FC 732](#); *Novo Nordisk Canada Inc. v Canada (Health)*, [2019 FC 822](#); *Canadian Shipowners Association v Laurentian Pilotage Authority*, [2016 FC 1007](#); *54039 Newfoundland and Labrador Limited (George Street Association) v St. John's Port Authority*, [2011 FC 740](#); *Ridgeview Restaurant Limited v Canada (Attorney General)*, [2010 FC 506](#), aff’d [2011 FCA 52](#); *Canwest Mediaworks Inc v Canada (Minister of Health)*, [2007 FC 752](#), at para [10](#), aff’d [2008 FCA 207](#).

¹⁰ *Rebel News* at para [49](#).

appreciation’ of the application’s ‘essential character’ by reading it holistically and practically.”¹¹

B. THE APPLICATIONS ARE MOOT

1) Test for Mootness

30. A matter is moot where there is no longer a live issue between the parties and an order will have no practical effect.¹² If a matter is moot, the Court may choose to exercise its discretion to hear the application, upon considering the following factors: (1) the presence of an adversarial context; (2) the appropriateness of applying scarce judicial resources; and (3) the Court’s sensitivity to its role relative to that of the legislative branch of government. A judicial determination that a case is moot and lacking discretionary grounds for proceeding provides a valid basis for dismissal.

2) First Branch of Doctrine of Mootness: No Live Controversy

31. There is no live controversy between the parties given that the Emergency Measures have been revoked. There is nothing concrete or tangible for the Court to opine on that will impact the rights and interests of the parties, as the Emergency Measures are no longer in force. Any argument that the applicants could still face consequences from the Emergency Measures “is speculative and would not justify proceeding with ...[a matter]... which is moot.”¹³

32. The applications amount to requests for declarations which fail to provide live issues for judicial resolution, contrary to this Court’s guidance that requests for declaratory relief cannot sustain a moot case in and of itself.¹⁴ Put another way, mootness “cannot be avoided” on the basis that declaratory relief is sought.¹⁵

¹¹ *JP Morgan* at para 50.

¹² *Borowski v Canada (AG)*, [1989] 1 SCR 342 at p. 353 [*Borowski*].

¹³ *N.O. v Canada (Minister of Citizenship and Immigration)*, 2016 FCA 214 at para 4, citing *Guzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 358 at para 4.

¹⁴ See for example, *Rebel News* at para 64.

¹⁵ *Fogal* at paras 24-27; see also *Rahman* at paras 17-21.

Moreover, “a declaration may only be granted if it will have a practical utility, that is, if it will settle a ‘live controversy’ between the parties.”¹⁶

33. In this case, there is no such practical utility given the revocation of the Emergency Measures. There is no remedy left for the Court to order that will have any practical effect on any of the applicants’ rights. As the Court noted in dismissing the stay motion brought by the applicants in T-306-22, a determination “would have no practical effect because the Emergency Measures including the *Public Order Emergency Proclamation* have already been revoked.”¹⁷ While the Court was careful to avoid prejudging the mootness of the underlying application on that motion, there is no difference in principle between the two proceedings.

34. In this context, the Court should avoid expressing an opinion on a question of law where it is not necessary to do so to dispose of the case, especially as Constitutional questions are in issue; abstract Constitutional pronouncements may prejudice future cases.¹⁸ As the Federal Court of Appeal has also noted, “a mere jurisprudential interest fails to satisfy the need for a concrete and tangible controversy.”¹⁹

35. Finally, the *Emergencies Act*’s requirements for both a parliamentary review (already underway²⁰) and an inquiry must also be considered.²¹ They will examine the circumstances that led to the proclamation of a public order emergency, and the measures taken to deal with it. As the Court of Appeal recently held, “gratuitously

¹⁶ *Income Security Advocacy Centre v Mette*, [2016 FCA 167](#) at para 6, citing *Daniels v Canada (Indian Affairs and Northern Development)*, [2016 SCC 12](#), [2016] 1 SCR 99 at para 11, *Solosky v The Queen*, [1979 CanLII 9](#), [1980] 1 SCR 821 and *Borowski*.

¹⁷ *Canadian Frontline Nurses and Kristen Nagle v Canada (Attorney General)*, 2022 FC 284 at para 19.

¹⁸ *Phillips v Nova Scotia Commissioner of Inquiry into the Westray Mine Tragedy*, [1995 CanLII 86 \(SCC\)](#) at paras 9-12; *Mackay v Manitoba*, [1989] 2 S.C.R. 357 at p. 361-2; *Danson v Ontario (Attorney General)*, [1990 CanLII 93 \(SCC\)](#), [1990] 2 S.C.R. 1086 at [1099-1101](#).

¹⁹ *Air Canada Canadian Union of Public Employees (Air Canada Component) v Air Canada*, [2021 FCA 67](#) at para 7 [*Air Canada*], citing *Borowski*.

²⁰ <https://www.parl.ca/Committees/en/DEDC>.

²¹ See ss. 62 and 63 of the *Emergencies Act*.

interpreting the former wording of a provision in issue, in a case with no practical consequences, just to create a legal precedent, would be a form of law-making for the sake of law-making. That is not our proper task.”²² This is especially the case when Parliament has legislated review mechanisms.

3) Second Branch: Discretionary Grounds

36. The Court ought not to exercise its discretion to entertain these moot applications. There is no adversarial context in relation to the relief sought as the public order emergency has ended and the Emergency Measures are no longer in effect. There is nothing left to adjudicate. Opining on a matter that is academic is not an optimal use of judicial resources, especially in light of the legislative mechanisms that exist in the form of parliamentary review and the legislated Inquiry. The Court would be going beyond its traditional role if it opined on a matter where there is no real dispute to resolve.

a) Adversarial context

37. On the first discretionary factor, while there may be disagreement with policy in this case, there is no legally relevant adversarial context with respect to the issue for which relief is sought (i.e., the invocation of the *Emergencies Act*).

38. In *Borowski*, the Court explained that an adversarial context is one where “collateral consequences” arise in related proceedings. For example, “if the resolution of an issue in an otherwise moot proceeding determines the availability of liability or prosecution in a related proceeding between the parties”.²³

39. There is no such collateral consequence here that warrants a hearing. None of the Applicants had their accounts frozen except for Cornell and Gircys, and their accounts are no longer frozen as a result of, or subject to, the Emergency Measures.

²² *Canadian Union of Public Employees (Air Canada Component) v Air Canada*, [2021 FCA 67](#) at para [13](#).

²³ *Azhaev v Canada (Public Safety and Emergency Preparedness)*, [2014 FC 219](#) at para [22](#); *Pelletier v Fort William First Nation*, [2021 FC 562](#) at paras [14-16](#).

Indeed, subsection 15(2) of the *Emergencies Act* confirms that these measures cannot remain in effect once revoked.²⁴

40. Similarly, should any of the Applicants suggest that an adversarial context may yet come into existence, this would not satisfy the requirement that there remain an adversarial context in the present case despite the issue in question being moot.²⁵ The possibility of a future adversarial context is insufficient.

41. Finally, a dispute over whether the Emergency Measures were constitutional and whether *Charter* declarations should issue is insufficient to establish an adversarial context as the measures have been revoked. While these allegations might be serious, as this Court acknowledged in striking the moot application in *Rebel News*, “it is not the role of this Court to decide purely abstract and academic questions when there is no obvious, useful purpose to be served by granting the declaratory relief sought by an applicant.”²⁶

42. There is no adversarial context to be generated by freestanding requests for declaratory relief, even *Charter* declarations. As this Court recently noted in *Germa*, with reference to the Supreme Court’s decision in *Mackay v Manitoba*, “a judicial review is not a reference where a party is seeking more general pronouncements.”²⁷

Practical Utility / Judicial Economy

43. The jurisprudence makes clear that where a proceeding will not have a “practical effect upon the rights of the parties, it has lost its primary purpose” and so

²⁴ *Emergencies Act*, s. 15(2)

²⁵ See: *Newman’s Valve Limited v Canada (National Revenue)*, [1997 CanLII 11998](#) (CA CITT), *Osakpamwan v Canada (Public Safety and Emergency Preparedness)*, [2016 FC 267](#) at paras 25-28, *Huo v Canada (Citizenship and Immigration)*, [2021 FC 1230](#) at para 10.

²⁶ *Rebel News* at paras 58 and 64, citing *Lee v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 242, [1997 CanLII 4837](#) at para 9.

²⁷ *Germa v Canada (AG)*, [2021 FC 134](#) at para 22, citing *Mackay v Manitoba*, [1989 CanLII 26 \(SCC\)](#), [1989] 2 SCR 357.

the “Court should no longer devote scarce resources to it”.²⁸ In addition, under the “judicial economy” analysis, courts may consider: (a) whether the matter is likely to recur and is evasive of review; and (b) whether the moot matter is of national or public importance.²⁹

44. Judicial economy weighs against the Court exercising its discretion here for several reasons. The Applicants seeking to quash the Emergency Measures have obtained the relief sought, as they are no longer in effect. Any declaration that the Emergency Measures were invalid or otherwise not compliant with the *Charter* would provide no practical utility. There is no concrete or tangible relief to be provided that warrants the Court’s intervention. The Emergency Measures were in place for short duration, and there is no continuing impact.

45. In “exceptionally rare cases, the need to settle uncertain jurisprudence can assume such great practical importance that a court may nevertheless exercise its discretion to hear a moot appeal.”³⁰ This is not such a case. Deciding these appeals involves the application of settled *Charter* and administrative law jurisprudence to a unique and particular factual matrix.

46. The question of whether the *Emergencies Act* was properly invoked is not evasive of review. In fact, Parliament saw fit to embed in the legislation itself adequate review and oversight mechanisms to ensure accountability:

(a) The Government is required to table a motion in both Houses of Parliament to confirm the declaration within seven sitting days after the proclamation is issued.³¹ It is also obligated to table orders and regulations in both Houses of Parliament two days after issuance;³²

²⁸ *Amgen Canada Inc v Apotex Inc*, [2016 FCA 196](#) at para [16](#) [*Amgen*], citing [Borowski](#).

²⁹ *Borowski* at p. [353](#).

³⁰ *Amgen* at para [16](#) citing *M v H*, [1999] 2 SCR 3 at paras [43-44](#).

³¹ *Emergencies Act*, s [58\(1\)](#).

³² *Ibid*, s [61\(2\)](#).

(b) The establishment of a joint committee of both Houses of Parliament for the purposes of reviewing the “exercise of powers and performance of duties and functions pursuant to a declaration of emergency” is also mandated.³³

(c) An Inquiry is to be “held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency”. It is to be established within sixty days after the revocation of the declaration of emergency, and a report submitted to both Houses of Parliament a year after the revocation.³⁴

47. It would be unnecessarily duplicative to have a parallel court proceeding while Government actions are being reviewed by parliamentarians, and through the eventual Inquiry.

48. Finally, the *Emergencies Act* is invoked in exceptional circumstances. The likelihood of this particular scenario recurring is unknown, and there is no evidence to suggest that the unusual circumstances that gave rise to the declaration would recur. These review and oversight mechanisms noted above may provide helpful insight, or recommendations, and result in policy changes that could preclude such a scenario from recurring. These mechanisms distinguish the present applications from other cases in which evasiveness of review has been invoked, for example, where the live controversy had existed for many years and its resolution would “continue to determine” subsequent disputes.³⁵

³³ The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons. See *Emergencies Act*, [s. 62\(2\)](#).

³⁴ *Emergencies Act*, [s. 60 to 63](#).

³⁵ *Saskatchewan (Minister of Agriculture, Food and Rural Revitalization) v Canada (Attorney General)*, [2005 FC 1027](#) at para [26](#) (a case involving a longstanding dispute over egg quota allocations, which had expired by the time of the hearing but would continue to inform future quota orders).

49. Moreover, the matter here does not warrant a hearing on the merits simply because it concerns the first invocation of the *Emergencies Act*. Matters of “national importance” do not automatically weigh in favour of proceeding with a moot case on discretionary grounds. There must be an additional “social cost in leaving the matter undecided.”³⁶ There is no clear social cost that would require this Court to hear these moot applications.

Proper Role of the Court

50. The third *Borowski* factor concerns the need for the Court to demonstrate a measure of awareness of its proper law-making function. The Supreme Court cautioned in *Borowski* that a court faced with a request to adjudicate a matter that has become academic must “be sensitive to its role as the adjudicative branch in our political framework. Pronouncing judgments in the absence of a dispute affecting the rights of the parties may be viewed as intruding into the role of the legislative branch”.³⁷

51. Another relevant factor here is Parliament’s role. The Federal Court of Appeal has noted that Parliament’s role in supervising the decision-making body in question is relevant to the third *Borowski* factor, and has declined to exercise its discretion to allow a moot case to proceed where Parliament also has a role in considering the same issues.³⁸

52. Parliament created specific tools in the *Emergencies Act* to review the exercise of the powers and the exercise of the duties pursuant to the declaration of a public order emergency in this case, as well as to inquire into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency. These are the measures Parliament saw fit to create to ensure accountability within the system. The Court should not opine on revoked measures for the sake of establishing a legal precedent without any practical consequences.³⁹ It is “entirely speculative and

³⁶ *Borowski* at p. [362](#).

³⁷ *Borowski* at p. [362](#); *Amgen* at para [16](#).

³⁸ *Democracy Watch v Canada (AG)*, [2018 FCA 195](#) at paras [20-22](#).

³⁹ *CUPE (Air Canada Component) v Air Canada*, [2021 FCA 67](#) at para [13](#); *Epicept*

premature” to guess what might occur in response to the Parliamentary review processes, never mind any potential future emergency.⁴⁰

53. The existence of an ongoing Parliamentary review process, as well as an upcoming legislated Inquiry, calls “for an extra measure of caution before the Court decides an issue that need not be decided to resolve a live dispute.”⁴¹ The matter here has strong public policy dimensions. These applications pertain to the executive branch’s decision to declare a public order emergency for a short duration. The applicants seek to continue these proceedings in a context where no live dispute exists, and whilst the legislative branch is in the midst of reviewing the decision made, and a legislated Inquiry is pending. The Court would be encroaching upon the legislative and executive spheres if the applications were heard.

C. APPLICANTS LACK STANDING

54. A party must have standing to bring an application for judicial review. There are two types of standing: direct and public interest standing.

55. The issue of standing may be decided on a preliminary motion to strike.⁴²

1) Direct Standing

56. Generally, a litigant must be directly affected by the matters at issue in order to have standing to raise them in court. This is known as direct standing, or standing as of right. In the Federal Court, this requirement is set out in s. 18.1(1) of the *Federal Courts Act*:

18.1 (1) An application for judicial review may be made by the Attorney General of Canada
18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada

Corporation v Canada (Health), [2011 FCA 2019](#) at para [10](#).

⁴⁰ *Rebel News supra* at para [62](#).

⁴¹ *Democracy Watch v Canada (AG)*, [2018 FCA 195](#) at para [22](#), citing *Democracy Watch v British Columbia (Conflict of Interest Commissioner)*, [2017 BCCA 366](#) at para [14](#).

⁴² *Finlay v Canada (Minister of Finance)*, [1986 CanLII 6](#) at para 20 (SCC) [*Finlay*].

Canada or by anyone directly affected by the matter in respect of which relief is sought. général du Canada ou par quiconque est directement touché par l'objet de la demande.

57. To establish direct standing, an applicant must show that the impugned decision:

- (a) directly affects their rights;
- (b) imposes legal obligations on them; or
- (c) prejudicially affects them.⁴³

58. Where the impugned administrative action applies broadly to the public at large, as do the Emergency Measures, the prejudice asserted in support of standing “must be qualitatively different” from that suffered by the public at large.⁴⁴ The fact that an individual feels strongly about the Emergency Measures, or feels inconvenienced by them, is insufficient.⁴⁵

59. An Applicant bears the burden of adducing sufficient evidence to establish that they are more directly affected by the Emergency Measures than is the public generally.⁴⁶

⁴³ *Friends of the Canadian Wheat Board v Canada*, [2011 FCA 101](#) at para [21](#); *League for Human Rights of B'nai Brith Canada v Odynsky*, [2010 FCA 307](#) at para [58](#).

⁴⁴ *Judicial Review of Administrative Action in Canada*, Donald J.M. Brown, John M. Evans, Ch 4:24.

⁴⁵ *Kulchyski v Trent University*, [2001 CanLII 11691](#) (ON CA) para [43](#).

⁴⁶ *Skibsted v Canada (Environment and Climate Change)*, [2021 FC 416](#) para [85-86](#).

Kristen Nagle lacks standing

60. Nagle's evidence demonstrates that her support for, and participation in, the Convoy was unaffected by the Emergency Measures. In fact, she willingly acted in contravention of the Emergency Measures without suffering negative consequences.

61. After the Emergency Measures came into force, Nagle continued to engage in the same Convoy-related conduct that she had engaged in prior to their implementation, without suffering any negative consequences. For example, she continued to:

- (a) solicit donations in support of the Convoy;⁴⁷
- (b) distribute funds to members of the Convoy;⁴⁸
- (c) provide other material support to members of the Convoy;⁴⁹
- (d) participate in the Convoy by travelling to prohibited areas in downtown Ottawa;⁵⁰ and,
- (e) bring minors to prohibited areas in downtown Ottawa to participate in the Convoy.⁵¹

62. Nagle's bank accounts and financial resources were never frozen.⁵²

63. Nagle was not forcibly removed from participating in the Convoy. She left the Convoy and downtown Ottawa on February 19, 2022 of her own accord.⁵³

⁴⁷ Affidavit of Kristen Nagle, sworn March 4, 2022 [**Nagle affidavit**] at paras 19, 32, 33.

⁴⁸ Nagle affidavit at paras 19, 20, 23, 32, 33.

⁴⁹ Nagle affidavit at paras 19, 20, 23, 32, 33.

⁵⁰ Nagle affidavit at para 30.

⁵¹ Nagle affidavit at paras 30 and 49.

⁵² Nagle affidavit at para 40

⁵³ Nagle affidavit at para 52.

64. Nagle retained the same ability to express her opposition to public health measures as did other members of the public. She remained at liberty to express her views outside of the prohibited places demarcated in the Regulations.

65. Nagle intentionally violated the Emergency Measures for days after their implementation, without consequence. Practically speaking, the Emergency Measures cannot be said to have prejudicially affected her.

Canadian Frontline Nurses lacks standing

66. CFN is a federally-incorporated, not-for-profit corporation.⁵⁴

67. There is no evidence to suggest that:

- (a) anyone other than Nagle acted on behalf of CFN at any material time;
- (b) any director, officer, member, or employee of CFN, other than Nagle, attended or supported the Convoy;
- (c) CFN took any action or engaged in any conduct separate or distinct from Nagle; and,
- (d) the Emergency Measures affected CFN any differently than they affected Nagle.

68. Even if the Emergency Measures caused a temporary reduction in financial contributions to CFN, judicial review cannot be used to protect interests that are strictly of a commercial nature.⁵⁵ Accordingly, CFN lacks direct standing for the same reasons as Nagle.

⁵⁴ Nagle affidavit at para 4 and Exhibit A.

⁵⁵ *Island Timberlands LP v Canada (Minister of Foreign Affairs)*, [2009 FCA 353](#) at para 7.

Jeremiah Jost lacks standing

69. Jost's evidence demonstrates that he was no more directly affected by the Emergency Measures than were other members of the public.

70. The Regulations temporarily prohibited any member of the public from participating in public assemblies in designated areas. Jost does not suggest that he was precluded from exercising his constitutional rights or civil liberties outside of those designated places. The restrictions imposed by the Regulations on his right to participate in the Convoy blockading downtown Ottawa applied equally to all members of the public.

71. The Emergency Measures imposed temporary legal obligations on all members of the public to refrain from engaging in prohibited activities in defined locations within downtown Ottawa. These legal obligations were no more applicable to Jost than to any other individual.

72. Jost does not assert that he was forcibly removed from downtown Ottawa or that he was otherwise specifically targeted by law enforcement. Instead, he left downtown Ottawa of his own volition in order to comply with legal obligations that applied to everyone.

73. Jost was no more prejudicially affected by the Emergency Measures than were any other members of the general public who wished to protest in downtown Ottawa. He remained at liberty to engage in public discourse or to exercise his constitutional rights outside of the specific areas defined in the Regulations.

Harold Ristau lacks standing

74. To establish direct standing, a party must demonstrate a causal relationship between the impugned decision and the prejudice that resulted.⁵⁶ That evidence cannot

⁵⁶ *Finlay* at paras [17 and 21](#).

be speculative.⁵⁷ Effects that are “too indirect, remote or speculative” to establish a causal link will not support a claim for standing.⁵⁸

75. Ristau only participated in the Convoy for one day, on February 12, 2022.⁵⁹ This was before the Emergency Measures came into effect. He confirms that these measures did not impede his ability to participate in the Convoy in Ottawa.⁶⁰

76. Ristau did not have accounts or financial resources frozen under the Order.

77. Ristau speculates, without evidence, that he suffered negative consequences upon returning home from Ottawa and that these consequences were directly caused by the Emergency Measures, rather than his participation in the Convoy. For example, Ristau speculates that the following events occurred as a direct result of the Emergency Measures:

- (a) Individuals in his seminary refused communion with him;⁶¹
- (b) His life was threatened;⁶²
- (c) Staff at his place of employment were threatened;⁶³
- (d) He received phone calls from a military veteran threatening harm and accusing him of desecrating the War Memorial, insurrectionism, and supporting Nazism, amongst other accusations;⁶⁴
- (e) His boss said he could not support the Convoy and required him to

⁵⁷ *Hupacasath First Nation v Canada (Foreign Affairs and International Trade Canada)*, [2015 FCA 4](#) at para [104](#); *Mckeil Marine Limited v Canada (Attorney General)*, [2016 FC 1063](#) (CanLII) at para [26](#).

⁵⁸ *Finlay* at para [22](#); *Canadian Council for Refugees v Canada (Immigration, Refugees and Citizenship)*, [2017 FC 1131](#), at paras [24-29](#).

⁵⁹ Affidavit of Harold Ristau, sworn March 9, 2022 [**Ristau affidavit**] at para 10.

⁶⁰ Ristau affidavit at paras. 8-27.

⁶¹ Ristau affidavit at para 30

⁶² Ristau affidavit at para 30

⁶³ Ristau affidavit at paras 30, 36.

⁶⁴ Ristau affidavit at paras 31-33

include a disclaimer on all work correspondence stating that his views were his own;⁶⁵

(f) His freedom of religion and worship at the War Memorial has been impaired and he does not know if he will ever feel safe there because “the government will be going after anyone who supported the Freedom Convoy;”⁶⁶ and,

(g) His reputation and integrity have been diminished as a result of being “labelled an insurrectionist and an enemy”.⁶⁷

78. Ristau attributes these occurrences to the decision to invoke the Emergency Measures without providing any factual basis to support these speculative conclusions. For example, he states that:

(a) He has been “directly and substantially harmed by the *Emergencies Act*” for participating in the Convoy and praying at the War Memorial, despite the fact that the Emergency Measures were not in force when he did so;⁶⁸

(b) The Emergency Measures “emboldened” the aforementioned veteran by “labell[ing] anyone who supported the protests as an enemy of the state and an insurrectionist”.⁶⁹ Aside from being speculative, this assertion is factually incorrect as the Emergency Measures use no such labels;

(c) His boss would not have spoken to him about his beliefs “if the *Emergencies Act* declaration had not occurred”;⁷⁰ and,

(d) “[He is] being threatened, intimidated, guilty, shamed, shunned, and ostracized within [his] religious community in a way that would not be

⁶⁵ Ristau affidavit at paras 39-41

⁶⁶ Ristau affidavit at paras 44-45

⁶⁷ Ristau affidavit at para 46

⁶⁸ Ristau affidavit at paras 10 and 29.

⁶⁹ Ristau affidavit at para 37.

⁷⁰ Ristau affidavit at para 39.

occurring but for the Emergencies Act being invoked”.⁷¹

79. There is nothing in the pleadings or the evidence indicating that the Emergency Measures directly affected Ristau’s rights, imposed legal obligations on him, or prejudicially affected him. Accordingly, he lacks direct standing.

Edward Cornell and Vincent Gircys have standing

80. Unlike the other applicants who claim direct standing, Cornell and Gircys have adduced evidence demonstrating that they were directly affected by the Emergency Measures.

81. Cornell testifies that his bank account, debit card, and credit cards were frozen pursuant to the Order, he was unable to use them, and as a result, he was unable to pay his bills.⁷²

82. Similarly, Gircys states that his bank accounts, credit card, and debit cards were frozen pursuant to the Order.⁷³ As a result, he lacked funds for fuel or food and had to rely on donations from strangers to facilitate his return home.

83. The evidence demonstrates that the Emergency Measures prejudicially affected Cornell and Gircys by temporarily denying them access to their financial resources. Accordingly, they satisfy the third element of the test for direct standing, although their application is still moot for the reasons noted above.

2) Public Interest Standing

84. Public interest standing is a matter of discretion, to be exercised in a purposive, flexible, and generous manner. Its underlying purposes are to ensure that state action conforms to the Constitution and statutory authority, and that there are practical and effective ways to challenge the legality of state action.⁷⁴ Public interest standing should

⁷¹ Ristau affidavit at para 43

⁷² Affidavit of Edward Cornell, sworn February 23, 2022 at paras. 21-27.

⁷³ Gircys affidavit at paras 50-55.

⁷⁴ *Canada (Attorney General) v Downtown Eastside Sex Workers United Against*

generally be denied where another reasonable and effective means exists to bring the issues before the Court.⁷⁵ The Supreme Court has said that, “[a]ll of the other relevant considerations being equal, a [party] with standing as of right will generally be preferred.”⁷⁶

85. In exercising discretion to grant public interest standing, the Court will consider:

- (a) whether there is a serious justiciable issue raised;
- (b) whether the applicant has a real stake or a genuine interest in it; and
- (c) whether, in all the circumstances, the proposed suit is a reasonable and effective way to bring the issue before the courts.⁷⁷

86. These factors are to be interpreted flexibly, liberally and cumulatively, in light of the underlying purposes of public interest standing.⁷⁸

87. The Respondent does not contest that both the CCLA and CCF have a genuine interest in the enactment of the Emergency Measures. However, the issues they raise are moot and will be examined via the Parliamentary review process and legislated Inquiry. Additionally, the parallel proceedings brought by directly affected applicants raise the same issues as CCLA and CCF but represent a more reasonable and effective means of bringing this matter before the Court.

88. When assessing the reasonable and effective means element of the test for public interest standing, the Court should take a purposive approach and consider, in light of realistic alternatives available given all the circumstances of the case, “whether the proposed action is an economical use of judicial resources, whether the issues are

Violence Society, [2012 SCC 45](#), [2012] 2 SCR 524 at para [31](#) [*Downtown Eastside*].

⁷⁵ *Finlay* at para [35](#).

⁷⁶ *Downtown Eastside* at para [37](#).

⁷⁷ *Downtown Eastside* at para [37](#).

⁷⁸ *Downtown Eastside* at para [53](#).

presented in a context suitable for judicial determination in an adversarial setting and whether permitting the proposed action to go forward will serve the purpose of upholding the principle of legality”.⁷⁹

89. Factors relevant to this determination include: a party’s capacity to bring forward an application; whether the case is of public interest; whether there are realistic alternative means favouring a more efficient and effective use of judicial resources; and the potential impact of granting public interest standing on others who are equally or more directly affected.⁸⁰

90. As noted above, the matters raised by the CCLA and CCF are moot. On this basis alone, the Applicants failed to satisfy the requirement for public interest standing.

91. Regardless, granting public interest standing to CCLA and CCF would not be an economical use of judicial resources, since the grounds set out in their notices of application are largely duplicative of those found in the notice of application filed by Cornell and Gircys. Cornell and Gircys seek judicial review of the same impugned decisions as do the CCLA and CCF and their application alleges that the Emergency Measures violate the same sections of the *Charter* as do CCLA and CCF.⁸¹ Duplication necessarily undermines efficiency.

92. Additionally, the CCLA and CCF applications lack the adversarial setting that the Supreme Court has identified as being preferable, and which exists in an application brought by a party with direct standing. The Supreme Court has noted that “[C]oncrete adverseness’ sharpens the debate of the issues and the parties’ personal stake in the outcome helps ensure that the arguments are presented thoroughly and diligently.”⁸²

93. Denying the CCLA and CCF public interest standing does not necessarily deprive them of the opportunity to provide the Court with their perspective, since they

⁷⁹ *Democracy Watch v Canada (Attorney General)*, [2018 FC 1290](#) para [60](#), citing *Downtown Eastside* at para [50](#).

⁸⁰ *Downtown Eastside* at para [51](#).

⁸¹ Notices of Application of CCLA, CCF, Cornell and Gircys.

⁸² *Downtown Eastside* at para [29](#).

may apply to intervene in the Cornell and Gircys application, if it proceeds. The Supreme Court has noted that:

the views of the public litigant who cannot obtain standing need not be lost. Public interests organizations are, as they should be, frequently granted intervenor status. The views and submissions of intervenors on issues of public importance frequently provide great assistance to the courts. Yet that assistance is given against a background of established facts and in a time frame and context that is controlled by the courts. A proper balance between providing for the submissions of public interest groups and preserving judicial resources is maintained.⁸³

94. The Court should decline to exercise its discretion to grant public interest standing to the CCLA and CCF.

PART IV– Order Sought

95. The Respondent, the Attorney General of Canada, requests that the applications be struck without leave to amend.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date at Ottawa this 11th day of April 2022.

**David Aaron / John Provart / Nur Muhammed-Ally
Of Counsel for the Respondent Attorney General of
Canada**

⁸³ *Canadian Council of Churches v Canada et al.*, [1992 CanLII 116](#) at p 263 (SCC).

PART V – LIST OF AUTHORITIES

Caselaw

1. *Lukács v Natural Sciences and Engineering Research Council of Canada*, [2015 FC 26](#)
2. *1397280 Ontario Ltd v Canada (Employment and Social Development)*, [2020 FC 20](#)
3. *Rebel News Network Ltd v Canada (Leaders' Debates Commission)*, [2020 FC 1181](#)
4. *Wenham v Canada (Attorney General)*, [2018 FCA 199](#)
5. *Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc.*, [2013 FCA 250](#) [2014] 2 FCR 557
6. *Cardin v Canada (AG)*, [2017 FCA 150](#)
7. *Lukács v Canada (Transportation Agency)*, [2016 FCA 227](#)
8. *Fogal v Canada* (2000), [1999 CanLII 7932](#), 167 FTR 266 (TD), aff'd [\[2000\] FCJ No 916](#) (CA) (QL), leave to appeal to SCC ref'd [\[2001\] SCCA No 84](#) (QL)
9. *Labbé v Létourneau* (1997), [1997 CanLII 4928](#), 128 FTR 291 (TD)
10. *Rahman v Canada (Minister of Citizenship and Immigration)*, [2002 FCT 137](#)
11. *Narvey v McNamara*, [1997 CanLII 5553](#), 140 FTR 1 (TD)
12. *Canada (AG) v Canada (Information Commissioner)*, [1997 CanLII 6362](#), [1998] 1 FC 337 (TD)
13. *Lee v Canada (Minister of Citizenship and Immigration)*, [1997 CanLII 4837](#), 126 FTR 229 (TD)
14. *Pauktuutit, Inuit Women's Assn v Canada*, [2003 FCT 139](#)
15. *Moses v Canada*, [2003 FC 1417](#)
16. *Chiu v Canada (National Parole Board)*, [2005 FC 1516](#)
17. *Khalifa v Canada (Minister of Citizenship and Immigration)*, [2016 FC 119](#)

Caselaw

18. *Kardava v Canada (Minister of Citizenship and Immigration)*, [2016 FC 159](#)
19. *0769449 BC Ltd (Kimberly Transport) v Vancouver Fraser (Port Authority)*, [2016 FC 645](#)
20. *Soprema Inc. v Canada (Attorney General)*, [2021 FC 732](#)
21. *Novo Nordisk Canada Inc. v Canada (Health)*, [2019 FC 822](#)
22. *Canadian Shipowners Association v Laurentian Pilotage Authority*, [2016 FC 1007](#)
23. *54039 Newfoundland and Labrador Limited (George Street Association) v St. John's Port Authority*, [2011 FC 740](#)
24. *Ridgeview Restaurant Limited v Canada (Attorney General)*, [2010 FC 506](#), aff'd [2011 FCA 52](#)
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26. *Borowski v Canada (AG)*, [\[1989\] 1 SCR 342](#)
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29. *Income Security Advocacy Centre v Mette*, [2016 FCA 167](#)
30. *Daniels rv Canada (Indian Affairs and Northern Development*, [2016 SCC 12](#), [2016] 1 SCR 99
31. *Solosky v The Queen*, [1979 CanLII 9](#), [1980] 1 SCR 821
32. *Canadian Frontline Nurses and Kristen Nagle v Canada (Attorney General)*, 2022 FC 284 (unreported)
33. *Phillips v Nova Scotia Commissioner of Inquiry into the Westray Mine Tragedy*, [1995 CanLII 86 \(SCC\)](#)
34. *Mackay v Manitoba*, [1989 CanLII 26 \(SCC\)](#), [1989] 2 SCR 357
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36. *Air Canada Canadian Union of Public Employees (Air Canada Component) v Air Canada*, [2021 FCA 67](#)
37. *Canadian Union of Public Employees (Air Canada Component) v Air Canada*, [2021 FCA 67](#)
38. *Azhaev v Canada (Public Safety and Emergency Preparedness)*, [2014 FC 219](#)
39. *Pelletier v Fort William First Nation*, [2021 FC 562](#)
40. *Newman's Valve Limited v Canada (National Revenue)*, [1997 CanLII 11998](#) (CA CITT)
41. *Osakpamwan v Canada (Public Safety and Emergency Preparedness)*, [2016 FC 267](#)
42. *Huo v Canada (Citizenship and Immigration)*, [2021 FC 1230](#)
43. *Germa v Canada (AG)*, [2021 FC 134](#)
44. *Amgen Canada Inc v Apotex Inc*, [2016 FCA 196](#)
45. *Saskatchewan (Minister of Agriculture, Food and Rural Revitalization) v Canada (Attorney General)*, [2005 FC 1027](#)
46. *McKenzie v British Columbia (Minister of Public Safety and Solicitor General)*, [2007 BCCA 507](#)
47. *Democracy Watch v Canada (AG)*, [2018 FCA 195](#)
48. *CUPE (Air Canada Component) v Air Canada*, [2021 FCA 67](#)
49. *Epicept Corporation v Canada (Health)*, [2011 FCA 2019](#)
50. *Democracy Watch v British Columbia (Conflict of Interest Commissioner)*, [2017 BCCA 366](#)
51. *Finlay v Canada (Minister of Finance)*, [1986 CanLII 6](#) (SCC)
52. *Friends of the Canadian Wheat Board v Canada*, [2011 FCA 101](#)
53. *League for Human Rights of B'nai Brith Canada v Odynsky*, [2010 FCA 307](#)
54. *Kulchyski v Trent University*, [2001 CanLII 11691](#) (ON CA)

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55. *Skibsted v Canada (Environment and Climate Change)*, [2021 FC 416](#)
56. *Island Timberlands LP v Canada (Minister of Foreign Affairs)*, [2009 FCA 353](#)
57. *Hupacasath First Nation v Canada (Foreign Affairs and International Trade Canada)*, [2015 FCA 4](#)
58. *Mckeil Marine Limited v Canada (Attorney General)*, [2016 FC 1063](#)
59. *Canadian Council for Refugees v Canada (Immigration, Refugees and Citizenship)*, [2017 FC 1131](#)
60. *Canada (Attorney General) v Downtown Eastside Sex Workers United Against Violence Society*, [2012 SCC 45](#), [2012] 2 SCR 524
61. *Democracy Watch v Canada (Attorney General)*, [2018 FC 1290](#)
62. *Canadian Council of Churches v Canada et al.*, [1992 CanLII 116](#) (SCC)

Secondary Sources

63. *Judicial Review of Administrative Action in Canada*, Donald J.M. Brown, John M. Evans, Ch 4:24

APPENDIX A – STATUTES AND REGULATIONS

<u>Emergencies Act</u> R.S.C., 1985, c. 22 (4th Supp.)	<u>Loi sur les mesures d'urgence</u> L.R.C. (1985), ch. 22 (4^e suppl.)
Effect of expiration of declaration 15 (1) Where, pursuant to this Act, a declaration of a public welfare emergency expires either generally or with respect to any area of Canada, all orders and regulations made pursuant to the declaration or all orders and regulations so made, to the extent that they apply with respect to that area, as the case may be, expire on the day on which the declaration expires. Effect of revocation of declaration (2) Where, pursuant to this Act, a declaration of a public welfare emergency is revoked either generally or with respect to any area of Canada, all orders and regulations made pursuant to the declaration or all orders and regulations so made, to the extent that they apply with respect to that area, as the case may be, are revoked effective on the revocation of the declaration. Effect of revocation of continuation (3) Where, pursuant to this Act, a proclamation continuing a declaration of a public welfare emergency either generally or with respect to any area of Canada is revoked after the time the declaration would, but for the proclamation, have otherwise expired either generally or with respect to that area,	Cessation d'effet 15 (1) Dans les cas où, en application de la présente loi, une déclaration de sinistre cesse d'avoir effet soit de façon générale, soit à l'égard d'une zone du Canada, ses décrets ou règlements d'application, ainsi que les dispositions des autres décrets ou règlements qui concernent cette zone, cessent d'avoir effet en même temps. Abrogation (2) Dans les cas où, en application de la présente loi, la déclaration est abrogée soit de façon générale, soit à l'égard d'une zone du Canada, ses décrets ou règlements d'application, ainsi que les dispositions des autres décrets ou règlements qui concernent cette zone, sont abrogés en même temps. Cas de prorogation (3) Dans les cas où une proclamation de prorogation de la déclaration soit de façon générale, soit à l'égard d'une zone du Canada est abrogée après la date prévue à l'origine pour la cessation d'effet, générale ou à l'égard de cette zone, de la déclaration, celle-ci, ses décrets ou règlements d'application, ainsi que les dispositions des autres décrets ou règlements qui concernent la zone, sont abrogés en même temps. Cas de modification (4) Dans les cas où, en application de la présente loi, une proclamation de modification de la déclaration est

(a) the declaration and all orders and regulations made pursuant to the declaration, or (b) the declaration and all orders and regulations made pursuant to the declaration to the extent that the declaration, orders and regulations apply with respect to that area, as the case may be, are revoked effective on the revocation of the proclamation. Effect of revocation of amendment (4) Where, pursuant to this Act, a proclamation amending a declaration of a public welfare emergency is revoked, all orders and regulations made pursuant to the amendment and all orders and regulations to the extent that they apply pursuant to the amendment are revoked effective on the revocation of the proclamation.	abrogée, les décrets ou règlements consécutifs à la modification, ainsi que les dispositions des autres décrets et règlements qui lui sont consécutifs, sont abrogés en même temps.
Motion for confirmation of proclamation continuing a declaration 60 (1) A motion for confirmation of a proclamation continuing a declaration of emergency and of any orders and regulations named in the motion pursuant to subsection (3), signed by a minister of the Crown, together with an explanation of the reasons for issuing the proclamation, a report on any consultation with the lieutenant governors in council of the provinces with respect to the proclamation and a report on the review of orders and regulations conducted before the issuing of the proclamation, shall be laid before each House of Parliament within seven	Motion de ratification de la prorogation 60 (1) Il est déposé devant chaque chambre du Parlement, dans les sept jours de séance suivant la prise d'une proclamation de prorogation d'une déclaration de situation de crise, une motion de ratification de la proclamation et des décrets et règlements mentionnés dans la motion en conformité avec le paragraphe (3), signée par un ministre et accompagnée d'un exposé des motifs de la prise de la proclamation, d'un compte rendu des consultations avec les lieutenants-gouverneurs des provinces au sujet de la proclamation, ainsi que d'un rapport de l'examen des décrets et règlements effectué avant la prise de la proclamation.

sitting days after the proclamation is issued. Motion for confirmation of proclamation amending a declaration (2) A motion for confirmation of a proclamation amending a declaration of emergency, signed by a minister of the Crown, together with an explanation of the reasons for issuing the proclamation and a report on any consultation with the lieutenant governors in council of the provinces with respect to the proclamation, shall be laid before each House of Parliament within seven sitting days after the proclamation is issued. Orders and regulations named (3) A motion for confirmation of a proclamation continuing a declaration of emergency shall name the orders and regulations in force on the issuing of the proclamation that the Governor in Council believed, on reasonable grounds, continued at that time to be necessary or, in the case of a proclamation issued pursuant to subsection 43(1), advisable, for dealing with the emergency. Consideration (4) Where a motion is laid before a House of Parliament as provided in subsection (1) or (2), that House shall, on the sitting day next following the sitting day on which the motion was so laid, take up and consider the motion. Vote (5) A motion taken up and considered in accordance with subsection (4) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment,	Motion de ratification de la modification (2) Il est déposé devant chaque chambre du Parlement, dans les sept jours de séance suivant la prise d'une proclamation de modification d'une déclaration de situation de crise, une motion de ratification de la proclamation signée par un ministre et accompagnée d'un exposé des motifs de la prise de la proclamation et d'un compte rendu des consultations avec les lieutenants-gouverneurs des provinces au sujet de la proclamation. Mention des décrets et règlements (3) Une motion de ratification d'une proclamation de prorogation d'une déclaration de situation de crise mentionne les décrets et règlements qui sont en vigueur lors de la prise de la proclamation et dont le gouverneur en conseil croit, pour des motifs raisonnables, la prorogation nécessaire à ce moment ou, dans le cas d'une proclamation prise en vertu du paragraphe 43(1), opportune pour faire face à la situation de crise. Étude (4) La chambre du Parlement saisie d'une motion en application des paragraphes (1) ou (2) étudie celle-ci dès le jour de séance suivant celui de son dépôt. Mise aux voix (5) La motion mise à l'étude conformément au paragraphe (4) fait l'objet d'un débat ininterrompu; le débat terminé, le président de la chambre met immédiatement aux voix toute question nécessaire pour décider de la motion.
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put every question necessary for the disposition of the motion.

Revocation of proclamation

(6) If a motion for confirmation of a proclamation is negatived by either House of Parliament, the proclamation, to the extent that it has not previously expired or been revoked, is revoked effective on the day of the negative vote and no further action under this section need be taken in the other House with respect to the motion.

Revocation of orders or regulations

(7) If a motion for confirmation of a proclamation continuing a declaration of emergency is amended by either House of Parliament by the deletion therefrom of an order or regulation named in the motion pursuant to subsection (3), the order or regulation is revoked effective on the day on which the motion, as amended, is adopted.

Orders and Regulations Tabling in Parliament

61 (1) Subject to subsection (2), every order or regulation made by the Governor in Council pursuant to this Act shall be laid before each House of Parliament within two sitting days after it is made.

Reference to Committee

(2) Where an order or regulation made pursuant to this Act is exempted from publication in the *Canada Gazette* by regulations made under the *Statutory Instruments Act*, the order or regulation, in lieu of being laid before each House of Parliament as required by subsection (1), shall be referred to the Parliamentary Review Committee within two days after it is made or, if

Abrogation de la proclamation

(6) En cas de rejet de la motion de ratification de la proclamation par une des chambres du Parlement, la proclamation, sous réserve de sa cessation d'effet ou de son abrogation antérieure, est abrogée à compter de la date du vote de rejet et l'autre chambre n'a pas à intervenir sur la motion.

Abrogation des décrets et règlements

(7) Si une motion de ratification d'une proclamation de prorogation d'une déclaration de situation de crise est modifiée par une chambre du Parlement par la suppression d'un décret ou d'un règlement qui, en application du paragraphe (3), y est mentionné, le décret ou le règlement en question est abrogé à compter du jour de l'adoption de la motion.

Décrets et règlements Dépôt devant le Parlement

61 (1) Sous réserve du paragraphe (2), les décrets ou règlements pris par le gouverneur en conseil en application de la présente loi sont déposés devant chaque chambre du Parlement dans les deux jours de séance suivant la date de leur prise.

Renvoi au comité

(2) Lorsqu'un décret ou un règlement d'application de la présente loi est soustrait à la publication dans la *Gazette du Canada* par les règlements d'application de la *Loi sur les textes réglementaires*, le décret ou le règlement, plutôt que d'être déposé conformément au paragraphe (1), est renvoyé au comité d'examen parlementaire dans les deux jours suivant sa prise ou, si le comité n'est pas

the Committee is not then designated or established, within the first two days after it is designated or established. Motion for revocation or amendment (3) Where a motion, for the consideration of the Senate or the House of Commons, to the effect that an order or regulation laid before it pursuant to subsection (1) be revoked or amended, signed by not less than ten members of the Senate or twenty members of the House of Commons, as the case may be, is filed with the Speaker thereof, that House of Parliament shall take up and consider the motion within three sitting days after it is filed. Vote (4) A motion taken up and considered in accordance with subsection (3) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion. Motion for concurrence (5) If a motion debated in accordance with subsection (4) is adopted by the House, a message shall forthwith be sent from that House informing the other House that the motion has been so adopted and requesting that the motion be concurred in by that other House. Consideration (6) Where a request for concurrence in a motion is made pursuant to subsection (5), the House to which the request is made shall take up and consider the motion within three sitting days after the request is made. Vote on motion for concurrence	alors constitué, dans les deux premiers jours suivant sa constitution. Motion d'abrogation ou de modification (3) Dans les cas où le président du Sénat ou de la Chambre des communes est saisi d'une motion signée par au moins dix sénateurs ou vingt députés, selon le cas, demandant l'abrogation ou la modification d'un décret ou d'un règlement déposé devant la chambre en application du paragraphe (1), cette chambre étudie la motion dans les trois jours de séance suivant la saisine. Mise aux voix (4) La motion mise à l'étude conformément au paragraphe (3) fait l'objet d'un débat ininterrompu; le débat terminé, le président de la chambre met immédiatement aux voix toute question nécessaire pour décider de la motion. Motion d'agrément (5) En cas d'adoption d'une motion conformément au paragraphe (4) par une chambre, celle-ci adresse un message à l'autre chambre pour l'en informer et requérir son agrément. Étude (6) La chambre dont l'agrément est requis en application du paragraphe (5) étudie la motion adoptée par l'autre chambre dans les trois jours de séance suivant la requête. Mise aux voix (7) La motion mise à l'étude conformément au paragraphe (6) fait l'objet d'un débat ininterrompu; le débat terminé, le président de la chambre met immédiatement aux voix toute question nécessaire pour décider de la motion.
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(7) A motion taken up and considered in accordance with subsection (6) shall be debated without interruption and, at such time as the House is ready for the question, the Speaker shall forthwith, without further debate or amendment, put every question necessary for the disposition of the motion. Revocation or amendment of order or regulation (8) If a motion taken up and considered in accordance with subsection (6) is concurred in, the order or regulation is revoked or amended in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day of the vote of concurrence. Parliamentary Review Committee Review by Parliamentary Review Committee 62 (1) The exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed by a committee of both Houses of Parliament designated or established for that purpose. Membership (2) The Parliamentary Review Committee shall include at least one member of the House of Commons from each party that has a recognized membership of twelve or more persons in that House and at least one senator from each party in the Senate that is represented on the committee by a member of the House of Commons. Oath of secrecy (3) Every member of the Parliamentary Review Committee and every person employed in the work of the Committee	Abrogation ou modification du décret ou du règlement (8) Le décret ou le règlement qui fait l'objet d'une motion étudiée en application du paragraphe (6) et agréée est abrogé ou modifié conformément à la motion dès la date prévue par celle-ci; cette date ne peut toutefois pas être antérieure à celle de l'agrément. Comité d'examen parlementaire Examen 62 (1) L'exercice des attributions découlant d'une déclaration de situation de crise est examiné par un comité mixte de la Chambre des communes et du Sénat désigné ou constitué à cette fin. Composition du comité (2) Siègent au comité d'examen parlementaire au moins un député de chaque parti dont l'effectif reconnu à la Chambre des communes comprend au moins douze personnes, et au moins un sénateur de chaque parti, représenté au Sénat, dont un député appartient au comité. Serment de secret (3) Les membres du comité d'examen parlementaire et son personnel prêtent le serment de secret figurant à l'annexe. Réunions à huis clos (4) Les réunions du comité d'examen parlementaire en vue de l'étude des décrets ou règlements qui lui sont renvoyés en application du paragraphe 61(2) se tiennent à huis clos. Abrogation ou modification (5) Si, dans les trente jours suivant le renvoi prévu par le paragraphe 61(2), le comité d'examen parlementaire adopte une motion d'abrogation ou de modification d'un décret ou d'un
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shall take the oath of secrecy set out in the schedule. Meetings in private (4) Every meeting of the Parliamentary Review Committee held to consider an order or regulation referred to it pursuant to subsection 61(2) shall be held in private. Revocation or amendment of order or regulation (5) If, within thirty days after an order or regulation is referred to the Parliamentary Review Committee pursuant to subsection 61(2), the Committee adopts a motion to the effect that the order or regulation be revoked or amended, the order or regulation is revoked or amended in accordance with the motion, effective on the day specified in the motion, which day may not be earlier than the day on which the motion is adopted. Report to Parliament (6) The Parliamentary Review Committee shall report or cause to be reported the results of its review under subsection (1) to each House of Parliament at least once every sixty days while the declaration of emergency is in effect and, in any case, (a) within three sitting days after a motion for revocation of the declaration is filed under subsection 59(1); (b) within seven sitting days after a proclamation continuing the declaration is issued; and (c) within seven sitting days after the expiration of the declaration or the revocation of the declaration by the Governor in Council.	règlement ayant fait l'objet du renvoi, cette mesure s'applique dès la date prévue par la motion; cette date ne peut toutefois pas être antérieure à celle de l'adoption de la motion. Rapport au Parlement (6) Le comité d'examen parlementaire dépose ou fait déposer devant chaque chambre du Parlement un rapport des résultats de son examen au moins tous les soixante jours pendant la durée de validité d'une déclaration de situation de crise, et, en outre, dans les cas suivants : a) dans les trois jours de séance qui suivent le dépôt d'une motion demandant l'abrogation d'une déclaration de situation de crise en conformité avec le paragraphe 59(1); b) dans les sept jours de séance qui suivent une proclamation de prorogation d'une situation de crise; c) dans les sept jours de séance qui suivent la cessation d'effet d'une déclaration ou son abrogation par le gouverneur en conseil. Enquête 63 (1) Dans les soixante jours qui suivent la cessation d'effet ou l'abrogation d'une déclaration de situation de crise, le gouverneur en conseil est tenu de faire faire une enquête sur les circonstances qui ont donné lieu à la déclaration et les mesures prises pour faire face à la crise. Dépôt devant le Parlement (2) Le rapport de l'enquête faite en conformité avec le présent article est déposé devant chaque chambre du Parlement dans un délai de trois cent soixante jours suivant la cessation
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Inquiry 63 (1) The Governor in Council shall, within sixty days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency. Report to Parliament (2) A report of an inquiry held pursuant to this section shall be laid before each House of Parliament within three hundred and sixty days after the expiration or revocation of the declaration of emergency.	d'effet ou l'abrogation de la déclaration de situation de crise.
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Federal Court



Cour fédérale

Date: 20220301

Docket: T-306-22

Citation: 2022 FC 284

Ottawa, Ontario, March 1, 2022

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

CANADIAN FRONTLINE NURSES and KRISTEN NAGLE

Applicants

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] This is an order and reasons respecting a motion for an interlocutory injunction, or stay, of the *Public Order Emergency Proclamation* and related orders issued by the Governor in Council on February 14 and 15, 2022, pending the hearing of the Applicants' application for judicial review of the proclamation and orders.

[2] Before the motion could be heard, the proclamation of a state of emergency was revoked, as were all orders and regulations made pursuant to the proclamation. As a result, the motion is moot and must be dismissed. The question of whether the underlying application for judicial review may proceed to a determination on its merits, notwithstanding revocation of the proclamation and orders, will be decided at a later date on the basis of a fuller evidentiary record and submissions by the parties. This motion order does not address that question. Nothing in these reasons should be construed as a finding in relation to the merits of the underlying application and whether it may still be heard and determined.

[3] The Applicant, Canadian Frontline Nurses, is a registered not-for-profit corporation. The Applicant, Kristen Nagle, is a Registered Nurse and a director and member of Canadian Frontline Nurses. The Attorney General of Canada is the representative Respondent on behalf of the Governor in Council.

II. Legal Context

[4] On February 14, 2022, Order in Council P.C. 2022-106, the *Public Order Emergency Proclamation*, was issued pursuant to s 17(1) of the *Emergencies Act*, RSC 1985, c 22 (4th Supp) (the *Emergencies Act* or the *Act*). The following day, Order in Council P.C. 2022-107, the *Emergency Measures Regulations*, and Order in Council P.C. 2022-108, the *Emergency Economic Measures Order*, were issued pursuant to the *Public Order Emergency Proclamation*.

[5] On Friday, February 18, 2022 the Applicants filed an application for judicial review seeking declaratory and other relief in respect of the *Public Order Emergency Proclamation*, the

Emergency Measures Regulations, the *Emergency Economic Measures Order* and any other regulations, orders or measures issued or implemented pursuant to the *Proclamation*.

[6] Also on February 18, 2022, the Applicants filed a Notice of Motion seeking a temporary interlocutory order staying Order in Council P.C. 2022–106 until their judicial review application is heard and determined. Furthermore, they sought the issuance of other procedural orders and costs of the motion on a substantial or full indemnity basis. In support of the motion, the Applicants filed a Motion Record that included the affidavit of Kristen Nagle and the affidavit of the Applicants' lawyer attaching copies of the legislative instruments as exhibits.

[7] In her affidavit sworn on February 18, 2022, Ms. Nagle deposed that she had participated in the protests in Ottawa, that Canadian Frontline Nurses required access to funds stored at financial institutions to support its mission, that she had bank accounts and credit cards and needed access to funds to secure necessities of life for herself and her family. Ms. Nagle deposed that she wished to continue to express her opinions in the protests but could not conceive of how she would be able to do so if she was prevented from receiving, directly or indirectly, funds necessary to maintain life. She did not depose that her bank accounts, credit cards or other funds had been seized or restrained.

[8] With the Notice of Motion and Motion Record, the Applicants also submitted an informal request by letter pursuant to Rule 35 (2) of the *Federal Courts Rules*, SOR/98-106 seeking the appointment of a special time and place for the motion to be heard, other than at the General Sittings of the Court, and for the convening of an urgent case conference. In response to the

request for an expedited hearing, Chief Justice Crampton ordered that the matter continue as a specially managed proceeding and appointed the undersigned and Prothonotary Milczynski as Case Management Judges. The Court then issued a direction convening a case management conference with counsel for the parties for Tuesday, February 22, 2022.

[9] At the case management conference on February 22, 2022, the motion was set down for hearing on Friday February 25, 2022 with an abridged time-table for the filing of the Respondent's Motion Record.

[10] On February 23, 2022 the Governor in Council issued the *Proclamation Revoking the Declaration of a Public Order Emergency*, SOR/2022-26, [Revoking Proclamation] which revoked the declaration of a state of emergency under the *Emergencies Act*. Pursuant to s 26(2) of the *Emergencies Act*, all orders and regulations made pursuant to the declaration were revoked effective on the revocation of the declaration.

[11] As a result of the issuance of the *Revoking Proclamation*, the Court requested the Registry to contact counsel for the parties on February 24, 2022 to ascertain their views on whether the motion was now moot and the hearing could be cancelled. Counsel for the Respondent advised that the matter was moot and there was no need for a hearing. Counsel for the Applicants disagreed and asked that the hearing proceed. When asked again for a substantive explanation of their position, counsel submitted a brief statement by email noting that costs remained a live issue between the parties and submitted that "...to the extent that the request for an interim stay...is rendered moot by the [Revoking Proclamation] ... the Court has jurisdiction

to hear the motion in spite of mootness...” citing the decision of the Supreme Court of Canada in *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*].

[12] A further direction was then issued that the Court would hear the parties on the issue of costs and on the question of whether the principles expressed in *Borowski* had any application in the context of a motion for a stay that is moot.

III. Issues

[13] At the outset of the hearing, the Applicants took the position that the motion was not moot because they considered that they were still at risk of prosecutions or of having their accounts and credit cards restrained for their actions during the period between the issuance of the *Public Order Emergency Proclamation* and the issuance of the *Revoking Proclamation* on February 23, 2022. Counsel for the Applicants acknowledged that this had not in fact happened and, as the hearing progressed, conceded that if there was no longer any risk of his clients being prosecuted or of having their funds restrained there were no grounds for a stay.

[14] The Applicants continued to maintain that the costs of the motion remained a live controversy between the parties and that costs should be awarded in their favour to be paid forthwith on a full or substantial indemnity basis. This was based largely on the assertion that they had succeeded as a result of the issuance of the *Revoking Proclamation* following the filing of their Notice of Motion.

[15] For the sake of clarity, it is appropriate to lay out the Court's views on several questions to explain why this motion is being dismissed and to avoid any confusion going forward. Those questions are as follows:

- 1) Why is the motion being dismissed for mootness?
- 2) Are the Applicants entitled to costs on the motion notwithstanding that it is being dismissed for mootness?

IV. **Analysis**

A. Why is the motion being dismissed for mootness?

[16] In *Borowski*, the Supreme Court of Canada set out general principles for dealing with the concept of mootness. The Court noted, at paragraph 15, that the doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question.

[17] The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case.

[18] The question of mootness can arise at any time before a decision is rendered. If, as in this context, events occur such that no present live controversy exists which affects the rights of the parties, the case is said to be moot and will not be decided. This general policy or practice is

followed in most cases unless the Court exercises its discretion to depart from it, applying criteria such as the concern for judicial economy, whether the adversarial relationship between the parties will continue and whether the case raises an issue of public importance of which a resolution is in the public interest.

[19] In the present matter, determination of the stay motion would have no practical effect because the legislative instruments made pursuant to the *Emergencies Act* including the *Public Order Emergency Proclamation* have already been revoked. To the extent that there remains an adversarial relationship between the parties, it is reflected in the Application for Judicial Review of the issuance of the *Proclamation*. The question of whether that application raises an issue of public importance of which a resolution is in the public interest can be determined at a later date based on a more complete evidentiary record and full argument between the parties.

[20] In their Supplemental Book of Authorities, the Applicants rely on *British Columbia Civil Liberties Association v Canada (Royal Mounted Police)*, 2021 FC 1475 [BCCLA], in which Associate Chief Justice Gagné exercised the Court’s discretion in accordance with the *Borowski* principles to dispose of a matter that was moot. However, it should be noted that in that case, the Court’s discretion was exercised only in regard to declaratory relief going to the merits of the application for judicial review, while the writ of mandamus initially sought by the Applicants was not disposed of, as even the Applicants conceded it was “without object” on account of its mootness: BCCLA at paras 6, 52.

B. *Are the Applicants entitled to costs on the motion notwithstanding that it is being dismissed for mootness?*

[21] There is no evidence before the Court that would support the claim made by counsel in argument that the Applicants had achieved success on the motion deserving of an award of costs, let alone costs on a full or substantial indemnity basis. There is no evidence upon which a reasonable inference could be drawn that the decision to issue the *Revoking Proclamation* was in any way related to the filing of the stay motion by the Applicants.

[22] Moreover, it should be noted that the Applicants' prospects of success on the motion were remote, based on the record before the Court, even if the *Proclamation* and related Orders in Council had remained in effect. This is relevant because implicit in the Applicants' contention that they should be awarded costs on the motion is the assumption that they would have succeeded should it not have been determined to be moot.

[23] An interlocutory order like a stay is an extraordinary and equitable form of relief. A decision to grant or refuse such relief is a discretionary one that must be made having regard to all of the relevant circumstances. The test for the issuance of an interim injunction, or stay of proceedings, is that set out by the Supreme Court of Canada in *Manitoba (Attorney General) v Metropolitan Stores Ltd*, [1987] 1 SCR 110; and *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334 [*RJR McDonald*].

[24] An applicant seeking a stay must demonstrate three things: (1) that the underlying application for judicial review raises a "serious question to be tried;" (2) that the applicant will

suffer irreparable harm if the stay is refused; and (3) that the balance of convenience (i.e. the assessment of which party would suffer greater harm from the granting or refusal of the injunction pending a decision on the merits of the judicial review application) favours granting the stay. The three branches or arms of the test are conjunctive. They must all be established.

[25] As counsel for the Applicants acknowledged during the hearing, the serious issue to be tried standard is elevated in the present matter because the stay, if granted, would effectively provide the remedy sought in the underlying application: *Baron v Canada (Minister of Public Safety and Emergency Preparedness)*, 2009 FCA 81. The Applicants would have had to demonstrate a likelihood of success on the underlying application. When the object of the motion is to stay the operation of what are on their face duly enacted laws, the threshold is very high. It is only in the clearest of cases that injunctions will issue to enjoin the operation of legislation: *Harper v Canada (Attorney General)*, 2000 SCC 57 at para 9 [*Harper*].

[26] The second branch of the stay test would also have been a formidable obstacle for the Applicants. To establish irreparable harm, an applicant must show that there is “real, definite, unavoidable harm – not hypothetical and speculative harm”: *Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 24. There must be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless the stay is granted: *Glooscap Heritage Society v Minister of National Revenue*, 2012 FCA 255 at para 31.

[27] Ms. Nagle’s evidence was, at best, speculative about the possible economic harms that might befall the organization and herself. There is no evidence that she qualified as a “designated

person” who might have been targeted for application of the financial measures. Some unidentified people at the protests in Ottawa had told her that their bank accounts were frozen after the *Emergencies Act* was invoked. Aside from the inadmissible hearsay aspect of this statement, it falls short of establishing clear and non-speculative irreparable harm.

[28] On the balance of convenience, the public interest must be taken into account, which includes the presumption that validly enacted measures are made for the public good and serve a legitimate purpose: *RJR McDonald* at p 343, 346, 348-49; *Harper* at para 9. The validity of those measures may be called into question, as it has in the underlying application for judicial review, but such a determination would not be made on an inadequate record in a motion for a stay. There will be opportunities to consider and determine whether the invocation of the *Act* was justified. This is not one of them. The Applicants are not entitled to costs for having filed a motion for a stay that was doomed to failure from the outset.

[29] In their oral argument, the Applicants relied on *R v Dadzie*, 2018 ONSC 1332 at para 10 [*Dadzie*], *Broomer v Ontario (Attorney General)* (2004), 121 CRR (2d) 163 (ON SCDC) at para 11 [*Broomer*], and on *Josef v Ontario Minister of Health*, 2013 ONSC 6091 at para 18 [*Josef*] to argue that costs against the Respondents should be awarded to the Applicants, as the Respondents’ act obviated the necessity for the continuation of the motion. The Applicants contend that the circumstances of the present motion are such that the criteria set out in those three cases for an award of costs in favour of the Applicants are met: a) the applicants are public interest litigants and the application raises issues of general public interest; b) the government

causes the application to become moot; c) as a result of the government's actions, the applicant has effectively achieved what it wanted on the application: *Dadzie* at para 10.

[30] However, all three of these cases may be distinguished from the present motion. In *Broomer*, the applicants had been specifically targeted by regulations and been issued lifetime bans on social assistance as a result. The repeal of those regulations had the effect of restoring the applicants' entitlements. Conversely, in the present motion, there is no evidence on record indicating that the Applicants ever were in fact targeted by specific emergency measures; thus, the repeal of those measures did not have the effect of restoring any rights or entitlements of the Applicants that may have been lost. In *Josef*, the change in public policy deprived the applicant of her day in court as the application was adjourned on consent and had not been argued on the merits, while in the present matter, the Applicants' motion for a stay was given a full hearing on February 25, 2022. Finally, *Dadzie* does not support the position of the Applicants, as in that decision, the Ontario Superior Court of Justice held that the three criteria enumerated above were not met: *Dadzie* at para 11.

[31] The Respondent has proposed that the question of costs be left to be determined in the cause, that is to say in the outcome of the underlying application for judicial review. That is, in the Court's view, a reasonable position.

ORDER IN T-306-22

THIS COURT ORDERS that the motion for an interim injunction is dismissed. Costs to be in the cause.

"Richard G. Mosley"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-306-22

STYLE OF CAUSE: CANADIAN FRONTLINE NURSES and KRISTEN
NAGLE V THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HEARD VIA VIDEOCONFERENCE OTTAWA AND
TORONTO

DATE OF HEARING: FEBRUARY 25, 2022

ORDER AND REASONS: MOSLEY J.

DATED: MARCH 1, 2022

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09 APR 2022

Judicial Review of Administrative Action in Canada

Title Page

**JUDICIAL REVIEW
OF
ADMINISTRATIVE
ACTION
IN CANADA**

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Donald J.M. Brown, John M. Evans

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Legal Topics

Administrative action in the form of Regulations, Rules, bylaws and guidelines is often general in nature, and as such it does not single out individuals or groups with a distinct, identifiable interest that distinguishes them from the public at large. Accordingly, while it is unnecessary for an individual to establish that the subordinate legislation has caused a legal injury,¹ the prejudice asserted must be qualitatively different from that suffered by the public at large,² with the result that standing to challenge subordinate legislation is usually

refused.³

However, in addition to the public interest exception established in *Finlay*,⁴ there are some important exceptions to the general rule that individuals lack a sufficient personal interest to challenge the validity of subordinate legislation. First, a person against whom enforcement proceedings are taken may raise the validity of the subordinate legislation as a collateral issue.⁵ Second, municipal legislation often provides that an application to a court to quash a bylaw may be made by a resident of the municipality, or by a person interested in the bylaw.⁶ Indeed, at common law local taxpayers have been held to have standing to challenge the legality of any administrative action involving the expenditure of money, whether or not in the form of a bylaw.⁷ Third, when subordinate legislation applies only to designated individuals or groups, its validity may be challenged by one of those to whom it is directed on the ground that he or she has a special interest not shared by the public as a whole.⁸ And fourth, it may be challenged at the instance of a person with a right to participate in its promulgation.⁹

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Footnotes

- ¹ [Antrim Yards Ltd. v. R. \(1991\), 44 F.T.R. 299 \(FCTD\).](#)
- ² E.g. [Service de Limousine Murray Hill Ltd. v. Québec \(Procureur général\) \(1988\), 33 Admin. L.R. 99 \(Que. C.A.\)](#), leave to appeal to SCC granted (1989), 33 Admin. L.R. xlv(n); [Strelioff v. Inuvik Liquor Store \(1982\), 135 D.L.R. \(3d\) 561 \(NWTSC\).](#)
- ³ E.g. [Kulchyski v. Trent University \(2001\), 204 D.L.R. \(4th\) 364 \(Ont. C.A.\)](#) (university professors lacked standing to challenge university resolution respecting reorganization); [Jamieson v. British Columbia](#)

([Attorney General](#)) (1971), 21 D.L.R. (3d) 313 (BCSC). The same is generally true of ratepayers who cannot demonstrate a special interest in relation to a bylaw: [Armstrong v. Langley \(City\)](#) (1992), 6 Admin. L.R. (2d) 161 (BCCA); [Meier v. Maple Ridge \(District\)](#) (1991), 62 B.C.L.R. (2d) 206 (BCSC), aff'd (1993), 80 B.C.L.R. (2d) 349 (BCCA); **see also** [R. v. Vancouver \(City\) Zoning Board of Appeal](#) (1966), 60 D.L.R. (2d) 331 (BCCA); [Cliff's Towing Service Ltd. v. Edmonton \(City\)](#) (1978), 88 D.L.R. (3d) 488 (Alta. C.A.); **and see** [Collin v. Kaplan](#), [1983] 1 F.C. 496 (FCTD) as to inmates' interest in relation to a prison rule.

4 [***Finlay v. Canada \(Minister of Finance\)***](#), [1986] 2 S.C.R. 607.

5 E.g. [***Thorne's Hardware Ltd. v. R.***](#), [1983] 1 S.C.R. 106 (liability to pay fees); [Cox v. College of Optometrists \(Ontario\)](#) (1988), 52 D.L.R. (4th) 298 (Ont. Div. Ct.), leave to appeal to Ont. C.A. ref'd (1988), 33 Admin. L.R. xlv(n) (professional discipline appeal).

6 E.g. *Municipal Act*, R.S.O. 1990, c. M.45, s. 136; **and see** S. Auerback & J. Mascarini, *The Annotated Municipal Act*, 2nd ed. (Agincourt, Ont.: Carswell, looseleaf).

7 E.g. [MacIlreith v. Hart](#) (1908), 39 S.C.R. 657; **compare** [Sims v. Sault Ste. Marie \(City\)](#) (1997), 34 O.R. (3d) 232 (Ont. Gen. Div.); **and see generally** on ratepayers' actions, *Canadian Encyclopedic Digest (Ontario)*, 4th ed. (Carswell, annual), Title 104.1, 1498-1507. However, provincial and federal taxpayers have not been regarded as having an interest that enabled them to challenge expenditure by these levels of government: [Smith v. Ontario \(Attorney General\)](#), [1924] S.C.R. 331; [***Thorson v. Canada \(Attorney General\) \(No. 2\)***](#), [1975] 1 S.C.R. 138 at pp. 154-59.

8 [Costco Wholesale Canada Ltd. v. British Columbia \(Board of Examiners in Optometry\)](#) (1998), 157 D.L.R. (4th) 725 (BCSC). **Compare** [Ainsley Financial Corp. v. Ontario \(Securities Commn.\)](#)

[\(1994\), 21 O.R. \(3d\) 104 \(Ont. C.A.\).](#)

- [9 Saskatchewan Action Foundation for the Environment Inc. v. Saskatchewan \(Minister of Environment & Public Safety\), \[1992\] 2 W.W.R. 97 \(Sask. C.A.\); Stein v. Winnipeg \(City\) \(1974\), 48 D.L.R. \(3d\) 223 \(Man. C.A.\); compare Wiswell v. Winnipeg \(City\), \[1965\] S.C.R. 512.](#)

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